CIVIL RIGHTS—1957

HEARINGS

BEFORE THE

SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS

OF THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

EIGHTY-FIFTH CONGRESS

FIRST SESSION

ON

S. 83, an amendment to S. 83, S. 427, S. 428, S. 429, S. 468, S. 500, S. 501, S. 502, S. 504, S. 505, S. 508, S. 509, S. 510, S. Con. Res. 5

PROPOSALS TO SECURE, PROTECT, AND STRENGTHEN CIVIL RIGHTS OF PERSONS UNDER THE CONSTITUTION AND LAWS OF THE UNITED STATES

FEBRUARY 14, 15, 16, 18, 19, 20, 21, 26, 27, 28, MARCH 1, 4, AND 5, 1957

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CIVIL RIGHTS—1957

THURSDAY, FEBRUARY 14, 1957

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

The subcommittee met, pursuant to call, at 10:10 a. m., in room P-63, United States Capitol Building, Senator Thomas C. Hennings, Jr. (chairman of the subcommittee), presiding.

Present: Senators Hennings, Ervin, and Hruska.

Also present: Charles H. Slayman, Jr., chief counsel, Constitutional Rights Subcommittee; and Robert B. Young, staff member, Committee on the Judiciary.

Senator HENNINGS. The committee will come to order.

We are very glad to have the distinguished Attorney General of the United States here this morning to open the hearings on the so-called civil-rights legislation.

Mr. Attorney General, you may proceed in any manner you prefer.

STATEMENT OF HON. HERBERT BROWNELL, JR., ATTORNEY GENERAL OF THE UNITED STATES, ACCOMPANIED BY WILLIAM P. ROGERS, DEPUTY ATTORNEY GENERAL; WARREN OLNEY III, ASSISTANT ATTORNEY GENERAL; AND EDWARD L. BARRETT, JR., SPECIAL ASSISTANT TO THE ATTORNEY GENERAL

Mr. BROWNELL. Mr. Chairman and members of the subcommittee, I have a prepared statement I would like to start with if that is agreeable with you, Mr. Chairman.

On April 9, 1956, I transmitted to the Vice President and to the Speaker of the House a four-point program recommended by the administration to protect the civil rights of our people. I am appearing before you today in support of this same program.

As you will remember, President Eisenhower, in his state of the Union message delivered to the Congress on January 19, 1957, reemphasized that we in this Nation have much reason to be gratified at the progress our people are making in mutual understanding. He reiterated that we are steadily moving closer to the goal of fair and equal treatment of all citizens without regard to race or color. The President observed, however, that "unhappily, much remains to be done." As a substantial step toward achieving this goal he urged passage of the administration program. This program includes:

(1) Creation of a bipartisan commission to investigate asserted violations of law in the field of civil rights, especially involving the right to vote, and to make recommendations;

(2) Creation of a civil-rights division in the Department of Justice in charge of a presidentially appointed Assistant Attorney General;

(3) Enactment by the Congress of new laws to aid in the enforcement of voting rights;

(4) Amendment of the laws so as to permit the Federal Government to seek from the civil courts preventive relief in civil-rights cases.

Proposed bills to carry out the administration program were submitted to the Congress last year. These bills in the form submitted by us are contained in one of the bills which is before the subcommittee today, S. 83, which was introduced into this Congress by Senator Dirksen and 36 other distinguished Members of the Senate and which is now before this subcommittee for consideration.

S. 83 also contains some additional provisions relating to the proposed bipartisan commission on which I shall comment later.

Numerous other proposals, including the bill in subcommittee print, which are before you have also been carefully studied by the Department of Justice, but I would like first to address myself to the administration program and thereafter comment on the other bills.

The first one I would like to discuss in detail, Mr. Chairman, is the bill authorizing civil remedies as distinguished from criminal remedies. These are the matters which appear under part 3 and part 4 of S. 83 on pages 14 to 17 of that bill.

I start out this discussion by saying what I am sure you will all agree to, that the right to vote is really the cornerstone of our representative form of government.

I would say that it is the one right, perhaps more than any other, upon which all other constitutional rights depend for their effective protection, and accordingly it must be zealously safeguarded.

The Federal Government has in the past and must in the future play a major role in protecting this essential right. It is true that under the Constitution the States are given the power, even with respect to elections for office under the Government of the United States, to fix the "qualifications" of the voters (art. I, sec. 2; amendment 17).

But this power of the States is limited, with reference to the election of Federal officers, by the express power given Congress to regulate the "manner" of holding elections—article I, section 4—and, more importantly, by the provisions of the 14th and 15th amendments.

The 15th amendment provides that in any election, including purely State and local elections, 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.

The 14th amendment prohibits any State from making or enforcing laws which abridge the privileges and immunities of citizens of the United States and from denying to any person the equal protection of the laws. The courts have held that these prohibitions operate against election laws which discriminate on account of race, color, religion, or national origin. And both of these amendments expressly confer upon Congress the power to enforce them by appropriate regulations. Beyond the provisions of the 14th and 15th amendments, which inhibit only official action, Congress has the broad power to protect voters in elections for Federal offices from action by private individuals which interferes with the right of the people to choose Federal officials.

As the Supreme Court said in 1941 in *United States* v. *Classic* (313 U. S. 299, 315), this right to choose—

> is a right secured by the Constitution * * * And since the constitutional command is without restriction or limitation, the right, unlike those guaranteed by the 14th and 15th amendments, is secured against the action of individuals as well as of States.

Congress passed many years ago statutes, now title 42, United States Code, sections 1971 and 1983, under which private persons claiming that they had been deprived of the right to vote on account of race or color by persons acting under color of State law have been able to bring civil suits for damages and preventive relief.

In fact, it is in a long series of cases brought by private individuals under these statutes that the courts have held that the constitutionally protected right to vote extends beyond the general election to any primary or special election which is either a recognized part of the State's election machinery or which is, in fact, the only election which counts in the ultimate selection of the elected officials.

The Congress has also authorized Federal criminal prosecutions in the voting field. Actions by private individuals which interfere with the right to vote for Federal officials may be prosecuted under title 18, United States Code, sections 241 or 594.

Persons who act under color of law to deprive individuals of their right to vote in any election, State or Federal, because of race, color, religion, or national origin may be prosecuted under title 18, United States Code, section 242. A number of prosecutions have been had under these provisions.

So much for the present framework under the laws.

The major defect in this statutory picture, however, has been the failure of Congress thus far to authorize specifically the Attorney General to invoke civil powers and remedies. Criminal prosecutions, of course, cannot be instituted until after the harm actually has been done yet no amount of criminal punishment can rectify the harm which the national interest suffers when citizens are illegally kept from the polls.

Furthermore, I think it is fair to point out that criminal prosecutions are often unduly harsh in this peculiar field where the violators may be respected local officials. What is needed, and what the legislation sponsored by the administration would authorize, is to lodge power in the Department of Justice to proceed in civil suits in which the problem can often be solved in advance of the election and without the necessity of imposing upon any official the stigma of criminal prosecution.

Let me now give you some examples of situations which have come before us in the Department in which we think the proposed legislation would have been of great assistance in protecting the right to vote.

First, let me refer to the situation which developed last year in Ouachita Parish, La.

In March 1956 certain members and officers of the Citizens Council of Ouachita Parish commenced an examination of the register of the voters of Ouachita Parish.

Thereafter, they filed approximately 3,420 documents purporting to be affidavits but which were not sworn to before either the registrar or deputy registrar, as required by law.

Mr. SLAYMAN. Excuse me, Mr. Attorney General, how many of those were there?

Mr. BROWNELL. 3,420.

Mr. SLAYMAN. 3,000?

Mr. BROWNELL. 3,420.

Mr. SLAYMAN. Thank you.

Mr. BROWNELL. In each purported affidavit it was alleged that the affiant had examined the records on file with the registrar, that the registrant named therein was believed to be illegally registered and that the purported affidavit was made for the purpose of challenging the registrant's right to remain on the roll of registered voters.

Such affidavits were filed challenging every one of the 2,389 Negro voters in ward 10. None of the 4,054 white voters in that ward were challenged.

Senator HENNINGS. General, in what part of the State is that parish?

Mr. BROWNELL. Near Monroe, La.

Senator HENNINGS. Near Monroe?

Mr. BROWNELL. Yes.

With respect to another ward, ward 3, such affidavits were filed challenging 1,008 of the 1,523 Negro voters.

Only 23 of the white voters in ward 3 were challenged. The registrar accepted their affidavits even though she knew that each affiant had not examined the registration cards of each registered voter he was challenging.

On the basis of these affidavits, citations were mailed out in large groups requiring the challenged voters to appear within 10 days to prove their qualifications. Registrants of the Negro race responded to these citations in large numbers. During the months of April and May large lines of Negro registrants seeking to prove their qualifications formed before the registrar's office, starting as early as 5 a. m.

The registrar and her deputy refused to hear offers of proof of qualifications on behalf of any more than 50 challenged registrants per day. Consequently, most of the Negro registrants were turned away from the registrar's office and were denied any opportunity to establish their proper registration.

Thereafter, the registrar struck the names of such registrants from the rolls. With respect to those registrants who were lucky enough to gain admission to the registrar's office, the registrar imposed requirements in connection with meeting the challenge which were in violation of Louisiana law.

The registrar refused to accept as witnesses, on behalf of challenged voters, registered voters of the parish who resided in a precinct other than the challenged voter or who had themselves been challenged or had already acted as witnesses for any other challenged voter.

By these means the number of registered Negro voters in Ouachita Parish was reduced by October 6, 1956, from approximately 4,000 to 694.

On October 10, 1956, Assistant Attorney General Warren Olney III, who is here with me today, testified concerning the facts regarding Ouachita Parish before the Senate Subcommittee on Privileges and Elections and recommended that the subcommittee hold public hearings in advance of the general election. The subcommittee took no action with respect to the situation.

The point I would like to make now is that, had the administration's program been in effect, the Department would have been able to initiate a civil action for the purpose of restoring the Negro voters to the rolls of registered voters in time to vote in the November election.

Our investigation has revealed similar situations in several other Louisiana parishes. Related problems have developed in other States. For example, our investigations disclosed the following situations in North Carolina just prior to the North Carolina primary elections of May 1956.

The North Carolina constitution (art. VI, sec. 4) and statutes (General Statutes 1943, ch. 163, art. 6, sec. 28) provide that a person, to become a registered voter, must be able to read and write any section of the North Carolina constitution to the satisfaction of the registrar. The constitution and statutes also contain a "grandfather clause" exempting any male person (or his lineal descendent), entitled to vote January 1, 1867, from this requirement if such person registered prior to December 1908.

What happened under these provisions?

1. Camden County (Courthouse Township precinct): In this precinct, the registrar gave the reading and writing tests to Negro applicants, but not to white applicants. The latter were permitted to register upon showing the necessary residence, and so forth.

In giving the reading and writing tests to Negroes, the registrar demanded that they write the preamble to the constitution from her dictation. She required in this connection that all spelling, punctuation, and capitalization be correct.

The complainants, 4 Negro high-school graduates, failed the test, although 2 were very determined and went back and memorized the whole preamble and passed another test.

The registrar recently resigned. During the 2 years she was in office (1954–56), she registered a total of 4 Negroes. During the same period, she registered 55 white persons. The population of the precinct is roughly 2 to 1—about 1,200 whites and 600 Negroes.

2. Brunswick County (Bolivia precinct), N. C.:

In this precinct, the practice of the registrar, according to his own statement, is to qualify Negroes under the educational tests (reading and writing a section of the constitution), and to register whites under the "grandfather clause."

3. Greene County (Snow Hill precinct): In this precinct, the registrar omitted as to both races the requirement pertaining to reading and writing a part of the constitution. However, as to Negro registrants, he demanded that they answer a list of 20 questions. The questions required them to name all candidates running for office in the county, to define primary and general elections, to state whether they were members of the NAACP, and whether they would support the NAACP should that organization attack the United States Government, and so forth. White applicants were required to answer no such questions.

The reason I give these example, of course, is to be able to point out that in most of these situations civil remedies would enable the Government to take affirmative action to deal with attempts at what amounts to mass disenfranchisement of Negroes in time to be effective,

In a civil proceeding for preventive relief or for a declaratory judgment, the constitutionality of the election practice could be quickly determined and appropriate relief awarded. Criminal remedies at best come after the harm has been done. Furthermore, we all know that jurors are reluctant——

Senator HENNINGS. General, if I may interrupt, isn't that true of our entire philosophy of criminal prosecution?

Mr. BROWNELL. Oh, yes; no doubt about that.

Senator HENNINGS. We indict and convict after the act?

Mr. BROWNELL. That is right; and it is a very important factor in this situation.

Jurors are reluctant to indict and convict local officials in a criminal prosecution even though they recognize the illegality of what has been done. As a result, not only are the election officials freed, but also the Government is not able to get an authoritative determination regarding the constitutionality of what was done.

The proposals of the administration would, of course, go beyond the voting cases, important as they are, and give to the Department the authority to invoke civil remedies in other cases of civil-rights violations. Here, as in the voting situation, private persons have long been able to bring civil suits where civil-rights violations have occurred.

Much of the large body of judicial precedent and decision which has been built up in the courts defining constitutionally protected rights has been handed down in such suits.

Yet, while the private persons can bring these suits, the Federal Government is limited to criminal prosecutions which, as in voting cases, are cumbersome, difficult, and in situations not involving brutality and violence, often unduly harsh.

Our experience over the years in civil-rights cases demonstrates that in many situations civil remedies would go far toward permitting the Government to arrive at the most rational and fair solution of the problems presented.

Let me give you an example of what I mean. The United States Supreme Court recently reversed the conviction of a Negro sentenced to death by a State court because of a showing that Negroes had been systematically excluded from the panels of the grand and petit juries that had indicted and tried him.

Senator ERVIN. Mr. Attorney General, I wish you would state what case that is.

Mr. BROWNELL. In Georgia. I think I come to that in a moment or two in my prepared text.

In so doing, the Supreme Court stated that, according to the undisputed evidence in the record before it, systematic discrimination against Negroes in the selection of jury panels had persisted for many years past in the county where the case had been tried.

In its opinion the Court mentioned, parenthetically, but we thought pointedly, that such discrimination was a denial of equal protection of the laws, and it would follow that it was a violation of the Federal civil-rights laws.

Accordingly, the Department of Justice had no reasonable alternative except to institute an investigation to determine whether in the selection of jury panels in the county in question the civil-rights laws

of the United States were being violated, as suggested by the record before the Supreme Court.

I think it must be clear to you that the mere institution of this inquiry aroused a storm of indigation in the county and State in question. This is understandable since, if such violations were continuing, the only course left open to the Government under the laws as they stand now was criminal prosecution of those responsible. That might well have meant the indictment in the Federal court of the local court attachés and others responsible under the circumstances.

Fortunately, in this case the Department was never faced with that disagreeable duty. The investigation showed that, whatever the practice may have been during the earlier years with which the Supreme Court's record was concerned, in recent years there had been no discrimination against Negroes in the selection of juries in that county.

Supposing, however, that on investigation, the facts had proved otherwise. The necessarily resulting prosecution would have stirred up such dissension and ill-will in the community that it might well have done more harm than good.

Such unfortunate collisions in the criminal courts between Federal and State officials can be avoided, certainly minimized, if the Congress would authorize the Attorney General to apply to the civil courts for preventive relief in civil-rights cases.

In such a proceeding the facts can be determined, the rights of the parties adjudicated and future violations of the law prevented by proper order of the court without having to subject State officials to the indignity, hazards, and personal expense of a criminal prosecution in the Federal courts.

I should like to add a few words regarding the relationship of these proposals to the school segregation situation. As you all know, the Supreme Court recognized the many difficulties involved in making the transition from segregated to nonsegregated education.

The Court said that—

> School authorities have the primary responsibility for elucidating, assessing, and solving these problems; courts will have to consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles.

Civil suits brought by private individuals are at the present time as a matter of common knowledge bringing the school situation before the Federal courts in increasing numbers of areas where segregation has been practiced.

Because of the discretion vested in the district courts in solving these questions the Department has not become aware of any case in which the exercise of its existing criminal jurisdiction is warranted. For similar reasons we should not expect often to be faced with the necessity of taking affirmative action in civil suits were the legislation now advocated by us enacted by the Congress.

There is, however, one type of situation in which these civil remedies might be useful in the school segregation area, illustrated perhaps by a case that arose in Hoxie, Ark.

There you will remember that the school board, in compliance with the United States Supreme Court ruling and without waiting for a lawsuit to be brought to compel them to do so, went ahead and desegregated the school.

They were proceeding peacefully with an unsegregated school, as is the case, of course, in overwhelming areas of our country. Then outside individuals came in and, as the court record shows, threatened the superintendent and the members of the school board with violence, and threatened some of the parents with violence, in case the unsegregated school proceeded.

In that case the school superintendent and the members of the board filed a suit in the Federal district court seeking to restrain the defendants from interfering with the operation of the school in the district on an unsegregated basis.

An injunction was issued and on the appeal the Department of Justice came in as a friend of the court and filed a brief in support of the plaintiffs. The court of appeals upheld the district court and the school is now back on an unsegregated basis with everything proceeding peacefully.

The school board in the Hoxie case was courageous and forthright in taking the case into court. There may well develop other situations in which, after voluntary desegration, the pressures placed upon the local school authorities are so great as to prevent their taking the initiative in instituting legal action.

In this type of situation the Department under this legislation would be authorized to take the initiative in filing a suit for an injunction against any individuals seeking to interfere with the school authorities in their attempt to comply with the ruling of the Supreme Court.

There is another area related to the school segregation issue in which the Department has been involved and may be involved in future cases—but for reasons unrelated to the legislative proposals now before you.

But to anticipate any questions on the subject, I would like to discuss it briefly at this point. That is the Clinton, Tenn., situation, the Federal district judge after much litigation entering an order in a civil suit brought by private individuals ordering the school officials to admit Negro students. This order became final and the school officials admitted the Negro children.

Thereafter, various private individuals sought by threats of force to compel the school authorities to violate the court order and exclude the Negro children.

In this situation, the school authorities appealed to the Federal judge and he issued an order charging a number of private individuals with contempt of court. Trial of this action is now pending. The Department, through the local United States attorney, will handle the prosecution in which it will be determined if the acts charged actually constituted contempt.

I wish to say to you at this time that the court in the Clinton situation already had full power to proceed and that the pending legislation will have no bearing on such cases. I want also to say to you that the problem of the Clinton case extends beyond civil-rights cases into all areas of Federal law enforcement.

Ours is a government of laws. The remedy for disagreement with an order of the Federal district court is an appeal, not resistance. Once such an order becomes final the Federal Government must have authority to protect persons acting pursuant to the order from outside interference. This protective power has long been recognized

and must exist if Federal law is to be made effective, if private individuals are not to be permited to make a mockery of Federal courts.

In concluding my presentation of the reasons why we urge the Congress to provide the Government with civil remedies in civil-rights cases, I should like to make three general observations. First, we are not asking for new and untried powers. The use of civil remedies as a means of enforcing Federal rights is not uncommon and exists in a number of areas.

For over 60 years, as a matter of fact, the Department of Justice itself has had experience in the coordinated use of civil and criminal remedies in the antitrust field. Ever since its adoption the Sherman Act has provided that the district courts should have jurisdiction to prevent ahead of time and restrain violations of the criminal sections of the act and has made it the duty of the Department of Justice to "institute proceedings in equity to prevent and restrain such violations."

I think it is fair to say that much of the success of the Department in antitrust work is directly attributable to the availability of civil remedies since here, as in the civil-rights cases, criminal prosecution of violators sometimes is unduly harsh and too restrictive.

The second observation I would make is this. These proposals would not extend or increase the area of civil-rights jurisdiction in which the Federal Government is entitled to act. These rights are now protected by amendments to the Constitution, and when they are violated the Government may act already under the criminal law.

Enactment of our proposals would add civil remedies which would not enlarge or in any way clash, as we see it, with the constitutional limitations on Federal Government action in this field. Rather it would permit us to take civil remedial action instead of having to depend solely on criminal proceedings. I am convinced it would make the difference between success and failure in the meaningful protection of the civil rights of our citizens.

Third, it has consistently been the policy of the Department over the years not to prosecute criminally under the civil rights statutes where remedial action has been taken locally.

But in those areas where the local community completely fails to respect Federal rights, the Federal Government must have power to act, and to act effectively, if the Federal Constitution and the Federal laws are to be, in the words of the Constitution, the "supreme law of the land."

The second proposal as I mentioned in the beginning, Mr. Chairman, is one dealing with the Civil Rights Division in the Department of Justice.

In 1939 the present Civil Rights Section was created in the Criminal Division of the Department of Justice. Its function and purpose has been to direct, supervise and conduct criminal prosecutions of violations of the Federal Constitution and laws guaranteeing civil rights to individuals. As long as its activities were confined to the enforcement of criminal laws it was logical that it should be a section of the Criminal Division.

Recently, however, the Justice Department has been obliged to engage in activity in the civil rights field which is noncriminal in character, such as the litigation arising out of the situations in Hoxie, Ark., and Clinton, Tenn.

Adoption by Congress of the administration proposals for giving civil remedies to the Government in these cases will cause the Department's duties and activities in the civil courts to increase even more rapidly than in the past.

We believe it is important that all of the Department's civil rights activities be conducted in a single division, but it is not appropriate that an organization with important civil as well as criminal functions should administered as a part of the Criminal Division.

Hence, for these reasons alone we urge the Congress to authorize the appointment of an additional Assistant Attorney General and the creation of a new Division in the Department to handle all civil rights matters. But even more important reasons make such action imperative. The civil rights field is extraordinarily complex.

Nearly every case involves subtle problems of constitutional interpretation along with delicate problems of Federal-State relationships. Every day as I deal with these problems, along with the myriad others which cross my desk, I become more conscious of the need to have responsibility centered in a well qualified lawyer with the status of a presidential appointee who will be able to devote his full time and attention to the legal aspects of civil rights problems within the area of Federal jurisdiction.

Senator HENNINGS. Mr. Attorney General, may I interrupt for just a moment?

Mr. BROWNELL. Surely.

Senator HENNINGS. You remember you and I had some discussion about various aspects of this last year when you testified before the full Judiciary Committee.

In order to aid our thinking and clarification on this legislation now before the subcommittee, I remember that we had some discussion, because the committee had reported out I think in February a bill requiring that there be not only appointed an Assistant Attorney General, but that he be charged with conducting a Civil Rights Division, instead of the Section which is now presently operative.

I see in checking further—I thought I was right in my assumption. Your bill says section 111 on page 14—your bill is a composite?

Mr. BROWNELL. Yes.

Senator HENNINGS. This contains all the bills?

Mr. BROWNELL. I think that is correct, Mr. Chairman.

Senator HENNINGS. Section 111 of the bill states:

There shall be in the Department of Justice one additional Assistant Attorney General who shall be appointed by the President by and with the advice and consent of the Senate who shall assist the Attorney General in the performance of his duties, who shall receive compensation at the rate prescribed by law for other Assistant Attorneys General.

You may recall this matter came up before, and I wondered why, since this undertakes to create a Division of Civil Rights, why isn't it spelled out that the Attorney General shall have within his purview the sole jurisdiction in the matter of the enforcement of the constitutional or civil rights of persons within the United States?

Mr. BROWNELL. I think there is a historical background there, Mr. Chairman, that perhaps accounts for that. Historically the Congress, each time it has created a new Assistant Attorney General, has merely done it more or less in a one-sentence statute, and realizing that con-

ditions change, has left to the authority of the Attorney General at the time the specific description of his duties.

It is well known that year after year they come before the Appropriations Committee, and it is broken down into civil, criminal, antitrust, tax and so forth.

But this has been a pattern that was established over the years and serves not to limit them.

Senator HENNINGS. I am aware of that, but since we have been speaking, Mr. Attorney General, of a Division, a Civil Rights Division within the Department of Justice, there is nothing in the bill which Senator Dirksen introduced on the matter, there is nothing in here that indicates to me that that Attorney General is not to be used, for example, in antitrust matters. It does not say so, and it does not put the intent of the Congress if the Congress should pass this legislation.

It certainly does not seem to be expressive of the intent, which is to create a Division to supersede the present Section.

Mr. BROWNELL. Perhaps I could give you an illustration.

Senator HENNINGS. So that this additional Assistant Attorney General could under the Attorney General be put to doing anything, couldn't he?

I don't refer to you but to your successors possibly.

Mr. BROWNELL. I think not.

In the first place, I would make a flat statement now and I am authorized to make it in behalf of the administration, that that would be the function of the Assistant Attorney General.

Senator HENNINGS. That is true perhaps and undoubtedly is true insofar as you are concerned, and I am giving you full credit for good faith on this.

The thing that disturbs me is what is going to happen in the future?

Mr. BROWNELL. Let me make a couple of observations on that, which I think will clear it up.

Senator HENNINGS. We will be glad to hear you.

Mr. BROWNELL. One is that of course we come before the Appropriations Committees of the two Houses each year, and a very, very detailed examination is made into this sort of thing, so that if there is any variation from such a pledge, it is caught immediately. Perhaps most important of all is this.

For example, if you start to put the language right in the bill, that he shall have full charge of it, does that mean, for example, that the Solicitor General could not argue an appeal?

There are all those interrelations within the Department itself, so we would not want to be tied up with statutory revisions.

Senator HENNINGS. To get away from the facets of this and to get into the functions of the others, the office of itself certainly does not preclude the Solicitor General appearing before the Supreme Court, but when we talk about a Civil Rights Division, I cannot understand why we do not say so in the legislation.

Mr. BROWNELL. There certainly would be no objection to putting it——

Senator HENNINGS. Even giving some of the historical judgement, it still in my humble judgement does not comport with what we like to call a Civil Rights Division. It just says one additional Attorney General.

Mr. BROWNELL. I think I have some reference to this later in my statement, but just in order that we may have it all at the same time, it is possible, for example, that a case may come up that it would seem advisable from a criminal case even in the area of civil rights to have some particular specialist who is in the Criminal Division try it, and that has been the historical reason, I think, why Congress has left the discretion there.

Senator HENNINGS. That is one thing and having charge of a division is another. You are the Attorney General of the United States, but that does not mean that you are either precluded from nor compelled to do this, that, and the other thing within the powers of your office.

Mr. BROWNELL. Perhaps a satisfactory arrangement would be to have the report express the understanding. I am a little hesitant of putting it right in the statute itself because this precedent going back over the years, I believe, has a pretty sound foundation.

In fact, no litigant would be able to say that we were not carrying out the terms of the statute if we used the ordinary discretion which we must have to have the best qualified person in the whole Department try the case.

Senator HENNINGS. You say you get to that later in your statement?

Mr. BROWNELL. I believe so.

Senator HENNINGS. I raise that point because I think it is exceedingly important. We are talking about a division, but we still do not create one under this language.

We appoint an additional Assistant Attorney General.

Mr. BROWNELL. Shall we proceed then, Mr. Chairman?

Senator HENNINGS. Please proceed.

Mr. BROWNELL. I shall proceed with the third proposal, which is the one relating to a Civil Rights Commission.

Above and beyond the need for improving the legal remedies for dealing with specific civil rights violations is the need for greater knowledge and understanding of all of the complex problems involved.

The proposal before you would create a bipartisan executive commission for the express purpose of making a full-scale study of the problem and of reporting within a 2-year period.

Senator HENNINGS. Mr. Attorney General, I don't like to interrupt you, but you and I are both lawyers and we are trying to get at this.

Mr. BROWNELL. That is perfectly all right.

Senator HENNINGS. I believe you used the words "making a full-scale study of the problem."

What do we mean by "full scale"?

Mr. BROWNELL. Shall I proceed with the description I have here of the functions of the Commission?

Then if I have not answered your question we could come to it then, for the language of the proposal itself, I think, gives the scope.

In the first place, it would be a temporary body designed to obtain information and not a continuing agency. In order that it would be able to be effective it would be give the authority to subpena witnesses, take testimony under oath in public hearings, and request necessary data from any executive department or agency.

A full-scale public study by such a commission will, we hope and expect, bring out the facts and therefore tend to unite responsible people of good will in common effort to solve these problems.

It should be remembered that under existing law there is no agency anywhere in the executive branch of the Federal Government with authority to investigate general allegations of deprivation of civil rights, including the right to vote.

The Federal Bureau of Investigation has an investigative jurisdiction in this civil rights area, but its authority is limited to investigating specific charges of violations of Federal criminal statutes.

Thus the services of the FBI can be utilized in this field only in gathering information and evidence in connection with specific charges which, if proven, can lead to criminal prosecution.

Throughout the Government there are excellent agencies that compile information on business and labor statistics, living costs, agricultural problems, weather conditions—almost every facet of our daily life. There is no agency authorized to gather information concerning the most vital function of our governmental life—our federally protected constitutional rights, the most important of which is the right to vote.

Senator HENNINGS. Doesn't your Civil Rights Section have anything to do with that?

Mr. BROWNELL. We cannot go out as an information-gathering agency.

Senator HENNINGS. I understand that, but when matters are brought to you?

Mr. BROWNELL. Specific charges for violations, that is right.

Senator HENNINGS. Specific complaints?

Mr. BROWNELL. Yes. But the authority to go out and gather the basic facts does not exist at the present time. They are rights without which government under the Constitution could not exist. The right to vote is itself the very lifeblood of representative government. This is a vital function about which all citizens, and Members of Congress particularly, should have full and complete information. Yet we do not have either the information or adequate means of securing it.

Senator HENNINGS. Mr. Attorney General, please forgive my breaking in. Perhaps you will answer this later, too.

Under the first 10 amendments of the Constitution, does it not devolve upon the office of the Attorney General to undertake such investigation as may seem to be indicated relating to the violation of the constitutional rights of citizens?

Mr. BROWNELL. Yes. Whenever we hear a charge made, a substantial charge of violation of Federal law, that is our obligation to go out and collect the evidence——

Senator HENNINGS. That is what I mean.

Mr. BROWNELL (continuing). With which to prosecute or clear the persons that are involved. What we have in mind for the Commission to do is quite different and apart from that function.

What we have in mind for the Commission to do would be to find out, for example, whether the practices under the election laws would, in fact, the way they are operated, violate civil rights of our citizens.

For the law-enforcement agency to do that, of course, would be more or less turning it into a national police.

Senator HENNINGS. I understand that.

Mr. BROWNELL. And that we are very anxious not to do.

That is the reason we ask for specific congressional authority to do this important job.

Now, there are one or two points I would make on this bill to create a commission. I referred to them briefly, I think, at the outset of my statement.

The Commission proposed by the President would present the means of securing this vitally needed information.

At the outset of my statement I noted that S. 83 contained with reference to the proposed Commission some provisions additional to those recommended by the administration.

One of these, the addition of the word "sex" on line 7, page 11, would make it the duty of the Commission to investigate allegations that citizens are being subjected to unwarranted economic pressures by reason of their sex.

This provision is not germane to the purpose of the legislation and should be stricken. If it is felt that there are serious problems of discrimination based on sex which should be investigated, they should certainly be dealt with separately from discriminations based on color, race, religion, or national origin.

Mr. SLAYMAN. General, may I interrupt there?

Mr. BROWNELL. Yes.

Mr. SLAYMAN. Is it your understanding that those discriminations you have just named are those that we have come—at least, by general agreement—to regard as civil rights?

Mr. BROWNELL. Yes.

Mr. SLAYMAN. Matters that deal with discrimination based on color, race, religion, or national origin?

Mr. BROWNELL. Yes.

Mr. SLAYMAN. But not including the one that you have just referred to—discrimination based solely on sex?

Mr. BROWNELL. That is my understanding and belief. In fact, I believe there is another bill that is before the subcommittee which would propose to add to this duty of the Commission the right to go into the area of discrimination based on membership or nonmembership in labor unions.

We would feel the same way about that that we do about adding the discrimination based on sex; that it is a subject apart from the civil rights area, and it would be an inappropriate provision to tack on to this bill.

Mr. SLAYMAN. As important as that might be for legislation, it is your understanding that that is not what we are trying to deal with in narrowing things down——

Mr. BROWNELL. That is right.

Mr. SLAYMAN (continuing): To traditional concepts of civil rights?

Mr. BROWNELL. That is exactly right.

Senator HENNINGS. I think Mr. Slayman and I talked about that yesterday or the day before and reached the same conclusion.

Mr. BROWNELL. Is that so?

Now there is one other addition to S. 83 that I would like to make special reference to and that is the provision for rules of procedure contained in section 102 on pages 2 to 10 of S. 83.

These rules of procedure are considerably more restrictive than those imposed on regular committees of the House and Senate. There is much in them which clearly would be desirable. We have not as yet had any experience with the use of rules such as those proposed here and we cannot predict the extent to which they might be used to obstruct the work of the Commission.

Favoring as I do the imposition of proper rules of procedures upon all governmental committees and commissions which conduct public hearings in order adequately to protect the individuals called before them, I am reluctant to take a stand opposing the imposition of the rules here involved.

Yet I feel that the task to be given to this Commission is of such great public importance that it would be a mistake to make it the vehicle for experimenting with new rules which may have to be tested out under the courts and this is only a 2-year Commission and you might have to spend those 2 years studying the rules instead of getting at the facts.

Another reason why I think perhaps the substance of these rules should be eliminated from this particular bill is that the caliber of the men whom the President would appoint to the Commission would be such that they could be counted on to give the fairest opportunity to witnesses and protect all of their legitimate rights.

So for these reasons I would suggest the deletion of those rules from the bill.

That concludes the part of my statement, Mr. Chairman, which deals with the so-called four proposals in the administration bill, but I would like, and you have invited me, to comment on other legislative proposals that are pending before the subcommittee.

There are several of them dealing with voting rights, on which I would like to comment in response to your invitation.

S. 427 and S. 500 and also title I of the bill in subcommittee print form contain provisions, as I say, dealing with the protection of voting rights. But we are inclined to favor the draft contained in S. 83 rather than that contained in these other bills for the reason that the S. 83 draft is limited to filling the important gap now present in the laws covering voting rights.

Private citizens, as I think I have mentioned before, have long had civil remedies against persons acting under color of law in voting cases.

Therefore we see no pressing need for statutory amendments that are directed to private litigation.

As to the amendment of the criminal sections, our experience has been that criminal sanctions are at best of limited value in civil rights voting cases. Therefore we recommend that at least until we have had experience——

Senator HENNINGS. Of limited values in the tax field?

Mr. BROWNELL. That is very different, that is right.

Senator HENNINGS. Nor in other offenses violative of the Federal statutes?

Mr. BROWNELL. That is right; and they are an important part even in this field, but I think we all recognize they have limited value, and that at least until we have had experience to determine whether we can fully vindicate you might say the Federal interest in voting

cases by the use of the civil remedies, we recommend that we leave the criminal statutes as they are.

That is a matter of judgment of course, but to shoot at the bull's eye and not try to cover everything at once, we believe that that would be the best course to follow.

These other bills that I speak of also have some provision regarding the Commission on Civil Rights. The ones, for example, contained in title II of the subcommittee print are substantially similar to that supported by the administration, with the exception that I mentioned above, that it adds to the Commission's duties the investigation of claims of discrimination based on sex.

Mr. SLAYMAN. However, the subcommittee print does contain the improvement, General, doesn't it, which you are here recommending but which has not been made in the administration bill itself, S. 83, yet—which would remove rules of procedure as presently written?

Mr. BROWNELL. That is correct. I am glad you brought that out.

Mr. SLAYMAN. I think this other item should be taken out in marking up the bill.

Mr. BROWNELL. I am glad you brought that out. Then with reference to the appointment of the new Assistant Attorney General—this is the point that I was going to make a minute ago, Mr. Chairman—and I perhaps am just repeating myself when I say this now—we believe that the language contained in the subcommittee print and in S. 428 and S. 502 is unnecessarily detailed because historically it has been given to the Attorney General to use his discretion in the assigning of responsibilities within his Department in the manner which from time to time seems most useful.

Also, we did not mention but perhaps should at the same time mention the fact that the subcommittee print bill has a provision about the duties of the FBI in this area, and we are inclined to think it is not necessary to put that in.

We have had of course the fullest cooperation from the Bureau in civil rights cases, and to the extent that new personnel is needed to keep up with increased civil rights activity, I am certain that Congress would appropriate the necessary budget requests for that purpose.

Mr. SLAYMAN. You would not see any objection to that being stated for legislative history in the committee report?

Mr. BROWNELL. I think it would be a good idea in fact to do that. I not only see no objection but I think that would be the proper way to handle it.

Senator HENNINGS. General, I wonder if you would be so kind as to have a study made to see whether there has ever been a division established by law rather than by executive action on the part of the Attorney General himself?

Mr. BROWNELL. All right. I am not prepared on it but I will be glad to have that study made and filed with you.

Senator HENNINGS. Neither am I. I would appreciate it very much and I am sure the committee would.

Mr. BROWNELL. The only division that has been created during my term of office which I could describe was the Internal Security Division and that was set up in the manner that we recommend here. Congress authorized the creation of an Assistant Attorney General, and

the scope of the authority was left to the discretion of the person in the Department.

Senator HRUSKA. Mr. Attorney General, wouldn't the fact that this section providing for the appointment of another Assistant Attorney General, being found in the fabric of an act of this kind, carry the necessary and almost inescapable connotation that that would be the scope of his duties and the purpose for his appointment?

Mr. BROWNELL. That is my opinion, yes.

Senator HRUSKA. Was that about the background and the setting in the case of the Assistant Attorney General in Charge of Internal Security?

Mr. BROWNELL. I believe that to be the case, but I will follow up with a study which the chairman suggests, to verify that.

Senator HENNINGS. General, I wonder if you would be good enough while you are having that study made, to have the background of the establishment of all of the divisions within your department presented?

Mr. BROWNELL. Yes.

Senator HENNINGS. It will be a good thing to have in the record. It will be very helpful.

Mr. BROWNELL. Now I come to the antilynching proposal so-called involved in the various bills.

Title IV, for example, of the bill in subcommittee print and also S. 429 and S. 505 would set up a Federal Antilynching Act, and certainly I think it is clear, I hope at least from our record, that we are not opposed to any legislation which would bring a complete end to anything that is so repugnant to all of our principles of law and justice as lynchings as that term is ordinarily understood.

But I would point out that the bill goes to the extent of making it a Federal crime, and here I quote from the bill:

> Whenever two or more persons shall knowingly in concert 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, religion or for any other reason which denies due process of law.

As you know, serious constitutional objections have been raised by responsible authorities to such an extension of Federal power over private citizens, and also doubts have been expressed as to the wisdom of such an extension of Federal jurisdiction, apart from constitutionality.

Now no doubt all of us in this room are shocked by such cases as——

Senator HENNINGS. What do you thing about the constitutionality General, just offhand?

Mr. BROWNELL. I have always felt, Mr. Chairman, that the most lawyerlike way to proceed in this area would be a constitutional amendment.

I would make reference here to such cases as Emmet Louis Till down in Mississippi where it was charged that two private individuals seized a Negro teen-aged boy and killed him because he had wolf-whistled at the wife of one of them.

All of us too have been shocked by the situation in Montgomery, Ala.——

Senator ERVIN. If I may interrupt at this point?

Mr. BROWNELL. Yes, indeed.

Senator HENNINGS. The Senator from North Carolina.

Senator ERVIN. During the last Democratic administration I had the privilege of sitting on the platform-drafting committee for 5 days in the city of Chicago, and during those 5 days a great many organizations came before us and deplored the Till murder case, which was an atrocious murder case. But during the time we were sitting and hearing of this atrocious case, 2 murders happened in the city of Chicago just as atrocious as the Till murder case, and yet nobody came before our committee to express any regret over those 2 matters.

Mr. BROWNELL. I think that that is correct. The Till case was used as propaganda on a worldwide basis. It had tremendous publicity, and damaged the interests of the United States, I am sure, because of that publicity.

But I agree with you, and the point I am going to try to make here is that we should consider the consequences very carefully when we are considering any such extension of this, of putting the Federal Government's jurisdiction into what are essentially murder cases.

There must be literally thousands, as you say, Senator, of cases each year, North and South, which involve violence to persons or property, in which the claim could be made that two or more persons conspired to commit the violence because of prejudice based on race, religion, or national origin.

Senator ERVIN. I might point out in this connection, Mr. Attorney General, while on the point that in the year 1955 there were 6,850 murders and non-negligent manslaughter cases in the United States. There were 19,100 rape cases, there were 57,490 robbery cases, and 92,740 cases of aggravated assault, and 492,530 cases of burglary, and 1,360,980 cases of larceny, and 227,150 cases of automobile theft, those being cases involving injuries to persons and property.

Mr. BROWNELL. Thank you for that bill of particulars Senator, which emphasizes the point I am trying to make, that if the Federal jurisdiction were extended in this way, the FBI would have the duty of investigating all these complaints.

The complaints would be larger than the numbers you have mentioned and ultimate Federal jurisdiction would turn on an issue of fact which would be, to put it mildly, exceedingly difficult to determine, that is whether the defendants knowingly in concert committed the violence because of antipathy based on race or religion or national origin.

Senator HENNINGS. That is a jury question.

Mr. BROWNELL. A jury question, so that we believe, we fear at least, that such Federal interference with local law enforcement would greatly disturb Federal and State relations throughout the country, and I think too it should be remembered that we have to depend on local communities to enforce the laws regarding violence to persons and property.

Senator ERVIN. Please pardon another interruption at this point. If such a bill were enacted and the jury should have a reasonable doubt as to whether the crime of violence grew out of a difference on a matter of race or color, the jury would have to acquit in the Federal court, no matter how atrocious the crime may have been?

Senator HENNINGS. May I say to my distinguished colleague from North Carolina that that also applies to murder in the first degree.

It must be done with premeditation, malice aforethought. That is a jury question.

All murders do not fall to the ground nor do many well-established cases of murder in the first degree simply because the State or the Federal Government, if the offense be committed on Federal property——

Senator ERVIN. But a man can be convicted in the State court on a charge of murder in the first degree regardless of whether the crime grew out of race or color; while if he is tried in a Federal court, under this bill he would have to be acquitted if the jury had a reasonable doubt it was committed on account of race or color even though the evidence showed beyond all reasonable doubt that he was guilty of murder in the first degree.

Senator HENNINGS. Again we get into the question of deliberation, premeditation, malice aforethought, don't we, Judge?

Senator ERVIN. No, we do not—I am assuming all of that. If he is tried in the Federal court and the crime was not committed on account of race or color, even though he was as guilty as the depths of perdition, why you would have to acquit him and go back to try him in the State court where he should be tried in the first place.

Mr. BROWNELL. I think I can make my point clear this way, perhaps, Senator, in closing the discussion on this antilynching area.

What really bothers us is that this tremendous extension proposed for Federal authority in this area would have the unfortunate effect of relieving local communities of any feeling of responsibility in such matters, which would tend to take us away from the ultimate goal of enlightened and responsible local enforcement of the criminal laws in all cases whether or not racial prejudice is involved.

The real concern that we have, the reason we are discussing this here today, is that we want to secure the passage at this session of Congress of a legislative program adequate to deal with at least the most pressing problems before us, and we are really afraid that any attempt to press for the antilynching bill at this time would serve only to divert attention from the basic, what shall we say, middle-of-the-road program which we have proposed, if we added the weight of substantial constitutional policy objections to the flood of determined opposition which already exists toward any form of civil-rights legislation, and might destroy any change for affirmative action at this session.

I have almost completed, Mr. Chairman. You have been very patient with me.

Senator HENNINGS. We have interrupted you, Mr. Attorney General and you have been very patient with us. Take all the time that you wish to.

Mr. BROWNELL. I have, since you asked me to comment on these other bills, a few other comments very briefly.

Mr. SLAYMAN. General, back on page 18 of your prepared testimony, where you were talking about the Emmet Till case, we had interrupted you there.

Did you finish that line "after the wolf-whistle"?

Mr. BROWNELL. I meant to, yes; I think I did.

Mr. SLAYMAN. What is that situation?

Mr. BROWNELL. I think I made that statement there, that we were also shocked by the situation in Montgomery, Ala. I think my words were, where private citizens have been shooting at Negro riders on buses and planting bombs in the houses of Negro citizens.

Senator ERVIN. While on that point, there was an assault committed on Nat King Cole and his assailants were tried by local courts in Montgomery and given the limit of the law; is that correct?

Mr. BROWNELL. That is my recollection; yes.

Senator ERVIN. And there have been a number of arrests in Montgomery, Ala., on account of these so-called bombings; have there not?

Mr. BROWNELL. That should be in the record and we are delighted with the action of the local authorities in that situation and hope it will be vigorously followed up so that the perpetrators of all of the crimes may be brought to justice.

Title V of the bill in the subcommittee print is substantially identical with the so-called administration proposal as contained in part 3 of S. 83. It does contain the additional provision that in civil actions the United States shall be liable for costs, the same as private persons.

I merely point that out in passing. The inclusion of such a provision is not of major importance. I think it perhaps would be preferable to leave it out. Then title VI of the bill in subcommittee print along with S. 468 and S. 504 proposes an amendment to title 18 of the United States Code, section 1114, to add to the long list of Federal officials the assaulting or killing of which while performing their official duties constitutes a Federal crime, uniformed members of the Army, Navy, Air Force, and Marine Corps—that is another one of those fringe matters that seems to be somewhat remotely related to the subject of civil rights, and while it is a question of policy concerning which we would not make any comment, I would be inclined for the accomplishment of our major purpose of getting this legislation through, to have that proposal considered separately on its own merits.

Finally, we are opposed to the omnibus bill such as S. 510, because it seems to us that including so many different kinds of proposals in a single package would almost surely insure its defeat.

Senator HENNINGS. That is the bill by Senator Humphrey, I believe.

Mr. BROWNELL. I believe that is correct, Mr. Chairman.

Senator HENNINGS. It has the FEPC provision in it.

Mr. BROWNELL. Yes. S. 509 would make some minor amendments to the peonage statutes. We certainly have no objection to the enactment of that legislation, but we prefer to have that separated from the main proposal.

S. 508 would amend sections 241 and 242 of the code, title 18. There I guess I have made that point clear already, that while we recognize that there are some inadequacies in the present statutes, we are not recommending amendment of them at this time, because as you know, there is grave doubt in our minds as to whether any further extension of the criminal law into this area at the present time would be advisable.

Senator HENNINGS. By that you mean as a matter of practicability?

Mr. BROWNELL. That is right.

Senator HENNINGS. And I take it—I do not use this unkindly—I gather, General, that it is your view that there must be a great deal of compromise in all this legislation in order to pass something, is that right?

Mr. BROWNELL. That is right; and after we have had a period of experience with these civil remedies, we might be back again one of these days seeking amendments to the criminal statutes which would cover specifically any area which our experience shows can be satisfactorily dealt with only by criminal prosecutions.

Mr. SLAYMAN. General, may I ask a question?

The Department of Justice lost the second Williams case in a very close decision of 5 to 4, but the decision was based on statutory construction rather than constitutionality.

I wonder, since the Department of Justice had presented what looked like such a fine brief in that case, if the Department has restudied section 241 and 242 provisions in line with making recommendations to the Congress to overcome that narrow statutory construction?

Mr. BROWNELL. Yes, we have.

Mr. SLAYMAN. I do not mean for this to interfere with your major points of emphasis, but it would be the kind of recommendation from the craftsmen in your Civil Rights Section that could be useful to us in looking at the criminal provisions.

Mr. BROWNELL. Might I have permission then to discuss that with the staff?

We do have some suggestions along that line. I think the only other one, Mr. Chairman, in closing these remarks, is the bill which would provide for the establishment of a joint congressional committee in the area of civil rights, and we feel that that is perhaps outside of our province and is entirely a matter for Congress to decide itself.

Senator HENNINGS. We will certainly be giving it a lot of study.

Mr. BROWNELL. I would want to be sure it was not used as a substitute.

Senator HENNINGS. Of things which are not clear or all too apparent to many?

Mr. BROWNELL. I wanted to be sure it was not considered as a substitute for the executive commission which we propose. That I believe concludes my prepared remarks, Mr. Chairman. Thank you very much for your courtesy and I will try to answer any questions you may have.

Senator HENNINGS. We appreciate very much your coming here today and calling attention as you have in this prepared statement to these matters.

I guess you and I could talk about this for a month in its various aspects.

Mr. BROWNELL. That is certainly true.

Senator HENNINGS. The Senator from North Carolina.

Senator ERVIN. Mr. Attorney General, this provision of the subcommittee print which is unnumbered provides that whenever two or more persons shall knowingly in concert commit or attempt to commit violence upon any person, because of his race, color, creed, national origin, ancestry, language, religion, such persons shall constitute a lynch mob within the meaning of this title, and it provides for their punishment.

I give you a hypothetical case.

There was a Presbyterian and a Methodist down in North Carolina who got to arguing about the Presbyterian doctrine of predestination, and like all religious arguments the longer it lasted the more wrathful they became.

Now it happened that the Methodist had a brother standing by, and finally the Methodist said, "Well, I will admit that there may be something in the doctrine of predestination. I think the Presbyterians are predestined to go to hell."

Then the Presbyterian said to the Methodist, "Well, I would rather be a Presbyterian and know I am going to hell than to be a Methodist and not know where in the hell I am going."

Now thereupon the Methodist brother who was standing by said "Knock the devil out of him," and the Methodist hit the Presbyterian and knocked him down.

Now under this bill those two Methodists would constitute a lynch mob, would they not, because that violence arose out of their creed?

Mr. BROWNELL. I can't imagine a Methodist doing that, Senator. [Laughter.]

Senator ERVIN. I will ask you to imagine that these were North Carolina Methodists who did things they ought not to have done, like the registrars in Camden and Brunswick County.

Now under this bill those two Methodists would be a lynch mob, would they not?

Mr. BROWNELL. I think I had better consult my pastor on that, Senator, instead of my legal judgment. I don't know. We are not advocating that provision.

Senator ERVIN. You are a lawyer and an expert on interpretation of statutes——

Mr. BROWNELL. I would doubt whether the proponents of that provision had any such situation in mind.

Senator ERVIN. Take another indiscretion, I will put myself in it. This is hypothetical. My brother is standing by, and my good friend Senator Hennings calls me a red-nosed Scotch Irishman and my brother says "Don't take that off of Tom," and I hit Tom.

Now my brother and myself would be a lynch mob because that would be a reference to my ancestry.

Is that not so under the bill?

Mr. BROWNELL. In that case I would recommend a presidential pardon for you, Senator, so you would not have to go to jail. [Laughter.]

Senator ERVIN. I am interested in your statement with reference to 3 of the registrars down in my State of North Carolina, 1 of them in the Court House precinct of Camden County. You pointed out there this registrar gave an examination to four Negro high-school graduates and initially declined their right to register under the literacy tests of the North Carolina constitution.

Then two of them came back and recited the Preamble to the Constitution and the registrar registered them and permitted them to vote.

Now so far as you know, was that statement based on evidence given by parties other than the registrar?

Mr. BROWNELL. I wonder if I could refer that to Mr. Olney, who is the head of the Criminal Division, who was in direct charge of the matter.

Senator ERVIN. In other words, I would like to know if that is based on statements of persons other than the registrar and whether the registrar was ever given an opportunity to make an explanation.

Mr. OLNEY. Senator, in each one of these instances the statement is based on FBI reports of their interviews with the people involved. I can't tell you offhand in any of these cases exactly who all of those people were. I believe in one of those instances, the statement makes it clear that the facts were as stated by the registrar himself.

With respect to the case that you are referring to, I am not sure.

Senator ERVIN. Did that investigation disclose any other Negroes except those two were denied the right to register and vote in Camden County?

Mr. BROWNELL. I believe perhaps the best way, if I may suggest, is that we will supply you detailed information in each one of those cases so you may have the full facts.

Senator ERVIN. I am interested because Camden County is one of the smallest counties in North Carolina.

The only reason it exists is because in the early days they had swamps around it and could not get across the swamps easily, and under the North Carolina election procedure these two colored boys—this occurred at the county seat, a small village, and they could have sought the county board of elections in a few minutes because you can walk all over the county in 15 or 20 minutes.

Mr. BROWNELL. We will be very glad to furnish you the full information on that.

Senator ERVIN. Now, concerning the grandfather clause. Most of the people in North Carolina know that the grandfather clause was held unconstitutional when I was a boy in my teens. I have lived in North Carolina a long time and have been interested in elections and I had to come all the way to Washington to find out that anybody in North Carolina was still operating under the grandfather clause.

Mr. BROWNELL. We were rather surprised too.

Senator ERVIN. In reference to Brunswick County, Bolivia precinct, on the top of page 7 of your prepared statement, you state that during the 2 years this registrar in the Court House precinct of Camden County was in office, she registered a total of 4 Negroes, and that during this period she registered 55 white persons. I will tell a story which has no application to you or me either, but it illustrates a point.

Down in my county we have a section called the South Mountains. A man in that section of the county had been buying groceries on credit. He went in to pay his bill, and when the storekeeper told him the amount of his bill, he thought it was too high and complained about it. The storekeeper got his account books and laid them on the counter and said, "Here are the figures and you know the figures don't lie," and the South Mountaineer said, "No, but liars sometimes figure."

Sometimes honest men figure. Now you can draw an inference from the fact that she registered 4 Negroes and 55 white people that Negroes were being deprived of their right to register.

In my precinct this past election, so far as I could tell in the registration period they registered about 150 Negroes and about 25 white people, which fact standing alone would justify the conclusion that maybe they were not letting white people register.

Now about this Bolivia precinct in Brunswick County, I would like to know whether any Negroes there were denied the right to register and vote by this registrar?

Mr. BROWNELL. We will get that information for you.

Senator ERVIN. And I would like to know the same thing about the Snow Hill precinct in Green County.

Mr. BROWNELL. Very good.

Senator ERVIN. And I would like to know if you have got any other substantiated claims against registrars in North Carolina, because we have in North Carolina approximately 2,400 precincts, and we have 3 election officials in each 1 of those precincts, and that is almost 7,500 people, in the neighborhood of it, between 7,000 and 7,500, and if North Carolina's good name is to be blackened in this connection, it ought to be based on something besides the dereliction of 3 of approximately 7,500 election officials.

Senator HENNINGS. Did the Senator say there are only three in each precinct?

Senator ERVIN. That is all.

Senator HENNINGS. One Republican and one Democrat?

Senator ERVIN. A Democratic registrar, a Republican judge, and a Democratic judge. Of course they have provision to bring in people to help them count in the case of large precincts. Under the North Carolina election machinery, we have a registrar to register the voters. We have laws providing every qualified citizen of the State is entitled to vote regardless of race. We have in each county a bipartisan county board of elections to which an appeal could be immediately taken from a registrar.

We have in the State a statewide bipartisan State board of elections composed of 3 Democrats and 2 Republicans, 5 of the finest citizens of North Carolina, and an appeal can be taken from any ruling of the county board of elections to the State board of elections.

I have lived in North Carolina all of my life. Although I have been active in politics, I have never heard of a single individual, until this morning, that has even been denied his right to register and vote on account of his race or color.

I want to follow the same order you did in reference to S. 83. I am just a little curious about your part 3, which is found on pages 14 and 15 of this bill.

This statute is not confined to the right to vote?

Mr. BROWNELL. To the what, Senator?

Senator ERVIN. It is not confined to the right to vote?

Mr. BROWNELL. That is right.

Senator ERVIN. It undertakes to amend a statute which is divided into three sections, the statute embodied in title 42, United States Code, section 1985.

The first section deals with preventing a Federal officer from performing his duties.

The second one deals with obstructing justice by interfering with witnesses and so forth, with which no one can have complaint.

I am just a little curious, however, about why you wish to amend the third section of it, in view of the decisions in the Harris case and in the Collins case.

In other words, your amendment which is embodied in Senate bill 83 undertakes to amend all three sections as I construe it. It adds an

additional section, which provides that when persons engage or about to engage in any of the acts or practices which would give rise to a cause of action pursuant to paragraphs 1, 2, or 3, the Attorney General may institute for the United States or in the name of the United States but for the benefit of the real party in interest a civil action, and so forth.

The third section of this statute is known as the old Ku-Klux Act. I read:

> 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.

That clause was in issue in United States against Harris, which is reported in 106 United States at page 629.

In that case the Supreme Court of the United States held the provision of the statute which made those identical things crimes was unconstitutional because Congress had no power to enact it under either the 13th or the 14th or the 15th amendments.

I am curious as to why the amendment was drawn so as to provide that the United States can bring a suit to obtain injunctive relief against acts which the Supreme Court of the United States held in United States against Harris did not fall within the legislative domain of Congress under either 1 of the 3 amendments.

Mr. BROWNELL. I think I can answer that, Senator.

I tried to follow your remarks carefully. There is no attempt made here to redefine or to increase the scope of the substantive provisions of the sections 1, 2, and 3.

These sections 4 and 5 are added here as machinery to enforce whatever the constitutional authority of the Federal Government may be in this area, and does not add to the substantive provisions of the statute.

Senator ERVIN. Certainly, Mr. Attorney General, if Congress has no power to provide any criminal penalties for those acts under the Constitution because it has no right to legislate in that particular area, it certainly would have no right to enact a civil law.

Mr. BROWNELL. That is correct, and we are not asking that. Anywhere it has been ruled against under the Constitution of the United States, the Federal Government does not have authority to act, it would still be out under this proposed legislation.

We merely ask for the remedies to apply to those that are constitutional.

Senator ERVIN. I do not believe that we ought to be asked to provide civil remedies for the implementation of an unconstitutional statute.

Mr. BROWNELL. No; and the proposals before you do not so provide.

Senator ERVIN. That is before us too; isn't it?

Mr. BROWNELL. Yes; but when it refers to that, Senator, it refers to that as interpreted by the Supreme Court, and where the Supreme Court has held that any particular case is outside the Federal area, we of course are bound by that, and the proposals that we make for remedies would not apply in such case or set of facts.

Senator ERVIN. This also applies on the face of it to acts of individuals, and I might state that in the case of *Collins* v. *Hardyman* reported in Three Hundred and Forty-first United States Reports, page 651. there was an attempt to bring a civil action under this section. The

Court held that the plaintiff had failed to make sufficient allegations under this section. The Court pointed out, however, that it had been held in previous cases that actions of this kind could not be prohibited by Congress unless it was committed by a State.

The Court said it was not necessary to pass again on the question of constitutionality, however, because the complainants did not allege a sufficient case although their pleading was apparently drafted on that theory.

I believe it would have been wise to have eliminated the part of this statute which has been declared unconstitutional instead of asking us to enact a statute which amends a statute which the Court has declared to be unconstitutional.

Mr. BROWNELL. I want to assure you, Senator, that we are not asking for anything here which has been declared unconstitutional. We are not asking for any authority in that area, because we believe in the Constitution and will follow its provisions to the best of our professional ability.

Senator ERVIN. Under the statute as it now exists, without the amendment proposed in part 3 of S. 83, a party injured by any of these acts which may have been constitutional is entitled to bring an action for recovery of damages.

If he is solvent and brings that action, he has to post a bond and run the risk of paying the costs if he loses, doesn't he, under present law?

Mr. BROWNELL. I would think so.

Senator ERVIN. And he has to compensate his own attorney?

Mr. BROWNELL. Yes.

Senator ERVIN. And his adversary, the defendant, would have a right to have the issues joined in that action tried before a jury, would he not?

Mr. BROWNELL. The general rules would apply there as to a jury trial.

Senator ERVIN. He would be given a jury trial, would he not?

Mr. BROWNELL. That would depend, I suppose. There are certain preventive relief actions that could be brought here where there would not be a jury trial.

Senator ERVIN. The statute says the parties so injured or deprived may have an action for recovery of damages occasioned by such injury or deprivation against any one or more of the conspirators. That is the remedy prescribed by the existing law.

Mr. BROWNELL. Yes.

Senator ERVIN. And would the defendant not have the right to have the issues determined by a jury, and the right to be confronted in person by the plaintiff and the plaintiff's witnesses?

Mr. BROWNELL. There is no doubt of that.

Senator ERVIN. And he would have the right to cross-examine them?

Mr. BROWNELL. Oh, yes; this, however, is in areas as you pointed out which is in the existing law, and what we are especially appealing for this morning is the right to bring preventive action.

Senator ERVIN. As far as this particular statute is concerned, there is already a civil remedy provided in an action to be brought by the aggrieved party?

Mr. BROWNELL. Yes, I tried to point that out.

Senator ERVIN. And you are asking to amend it not only to allow action for damages, that is for redress which I would take it would be sufficiently broad to be brought for the recovery of damages, but also for preventive relief including an application for a permanent or temporary injunction, for a restraining order or other order.

Mr. BROWNELL. I think that is an accurate statement, yes.

Senator ERVIN. What class of civil cases other than cases under the antitrust law does the United States bring?

Mr. BROWNELL. Well, I think the Defense Production Act, Housing and Rent Act would be two examples.

Senator ERVIN. Those are statutes which affect directly things which belong to the Federal Government?

Mr. BROWNELL. Fair Labor Standards Act might be another example. No more directly than this, Senator.

Senator ERVIN. You mean to say that the statute itself provides offenses in the antitrust laws are offenses against the United States, civil offenses rather than against individuals, aren't they, the ones that the United States prosecutes?

Mr. BROWNELL. Yes, but here the rights even stem from higher authority and that is the Constitution of the United States.

Senator ERVIN. I know. You gave that as an illustration. The civil actions that are brought for the enforcement of the antitrust laws are primarily suits brought in the interests of the United States rather than in the interests of individuals?

Mr. BROWNELL. No, I would say that exactly the same analogy could be drawn between the two areas, civil rights and antitrust.

Very often the private individuals benefit, and you might say they are the real party in interest in injunction cases brought under the antitrust laws.

Senator ERVIN. That would be indirect rather than direct; would it not?

Mr. BROWNELL. No more so than it would be in this area.

Senator ERVIN. The private individual who is injured by a violation of the antitrust law has a private suit?

Mr. BROWNELL. Yes, just as they do in the civil rights——

Senator HENNINGS. Isn't it true, if I may interrupt my distinguished colleague, that the law contemplates in criminal actions especially, that any offense against an individual is also an offense, if it be a State, an offense against the State or the Government as the case may be?

Mr. BROWNELL. There is nothing unique in that respect.

Senator ERVIN. But to this precise moment in the history of this country, the individual has been left to bring his own suit for the redress of the private wrong, and the Government has engaged in the criminal prosecutions, haven't they?

Mr. BROWNELL. Yes, and we think that is a very great gap in the law.

Senator ERVIN. I will ask you as a matter of fact that if there is any other statute that has ever been enacted by Congress providing that the Federal Government shall bring private suits for the redress of injuries to private individuals?

Mr. BROWNELL. Oh, yes.

Senator ERVIN. What case?

Mr. BROWNELL. We can give you quite a long list.

In addition to the Antitrust there is the Wage and Hour and the Housing and Rent Act, Defense Production Act. It is a normal thing for Congress to do, and we think a very bad omission in the civil rights area that we do not have that same authority.

Senator ERVIN. Mr. Attorney General, what provision is there in the Fair Labor Standards Act for the United States to bring suit for a private individual to recover his damages?

Mr. BROWNELL. We will furnish you with the exact statutory section.

Senator ERVIN. I wish you would.

Mr. BROWNELL. Yes, sir, we will be glad to.

Senator ERVIN. I do not claim to know all the law, but I am not familiar with any provision of the Fair Labor Standards Act that authorizes the United States Government to bring suit for a private individual.

It provides that the United States Government can bring suits, bring indictments for willful violations of the act and also provides that it can bring suits for the recovery of overtime and similar matters.

Mr. BROWNELL. I think that the Secretary of Labor, if he were here this morning, could show recovery of hundreds of thousands of dollars each year by the United States Government for the benefit of private individuals under the Wage and Hours Act.

Senator ERVIN. Under the suits that you contemplate that the Attorney General should bring under this act, the question whether a suit should be brought by the Attorney General is a matter of discretion; isn't it?

Mr. BROWNELL. That is right. He has his statutory obligation, of course, to act in enforcing the laws of the United States.

Senator ERVIN. And the Attorney General at his election can bring a suit for one individual and refuse to bring a suit for another individual?

Mr. BROWNELL. If the facts are different. If it is the same set of facts, I do not believe you would find that arising.

Senator ERVIN. I have heard it said that the facts in all cases are different. We say sometimes cases are on all fours and sometimes we say other things.

Mr. BROWNELL. Yes, that is one of the really just and fair provisions I think in our law which you undoubtedly are familiar with, that the Attorney General or any prosecuting official is given that discretion for the purpose of effecting true justice, and if he abides by his oath of office and is competent professionally, he can see to it that many individual justices are effected in that manner.

Senator ERVIN. He has to try a case in his own mind and come to to the conclusion that the particular party is in the right and the other man is in the wrong before he brings a suit; doesn't he?

Mr. BROWNELL. That is a pretty good way to put it, yes.

Senator ERVIN. In other words, the Attorney General tries the case first and he convicts the defendant in his own mind and then he brings a suit?

Mr. BROWNELL. Oh, no, I am sure from your own experience, after thinking it over you would restate that, because the obligation of any prosecutor when he commences a prosecution, he must have in his possession enough information to indicate that there is a prima facie case.

He does not convict. He does not know in most of the cases what the facts are going to turn out to be after everyone has had his day in court. But if he has a prima facie case, it is his obbligation to proceed.

Senator ERVIN. Does the Attorney General have to bring suit every time he has a prima facie case?

Mr. BROWNELL. Where he thinks the interests of justice would be served by it; yes, sir.

Senator ERVIN. And it is conceivable that the Attorney General would have to prosecute thousands of cases.

Do you know there in Louisiana, in that one parish there are hundreds of cases in that one parish?

Mr. BROWNELL. We would hope—evidently I did not make it clear—that in a case like that by an injunction action brought against the proper officials, that that could all be done at one time.

That is one of the real arguments in favor of the legislation which we propose.

Senator ERVIN. According to my way of thinking, the best nutshell analysis of the Constitution of the United States was made by Chief Justice Chase in *Texas* v. *White*. He said the Constitution in all of its provisions looks to an "indissoluble union composed of indestructible States."

I just wondered if you would agree with me in the observation that that is about as good a nutshell analysis of the Constitution as has ever been made.

Mr. BROWNELL. Yes, I think you can find I have quoted that with approval in a number of my civil-rights speeches.

Senator ERVIN. Now as a matter of fact don't the provisions in these bills, the third and fourth parts of S. 83, contribute very much to the theory that the States ought to be destroyed instead of preserved?

Mr. BROWNELL. On he other hand, I believe that there is no question, Senator, that this would do more to bring together people of good will in the State and Federal Governments than any other thing the Congress could do at this session, because at the present time, in order to carry out our oath of office, all we can do in this area is to use the criminal sanctions against State and local officials.

That does not contribute to the proper functioning of our Federal system. If we had these civil remedies, we could ameliorate that condition considerably, and I believe it would be a real contribution toward the maintenance of the proper balance between the Federal Governments that was contemplated by the Founding Fathers.

Senator ERVIN. You pointed out quite correctly in your statement that the right to prescribe the qualifications of voters is vested in the States under article 2 and article 17 of the Constitution, subject to the prohibitions in the 14th and 15th amendments and subject to the prohibition about denying franchise on account of sex.

Part III of this provides that the district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section, and shall exercise the same without regard to whether the party aggrieved shall have exhausted any administrative or other remedies that may be provided by law. A similar provision appears in part 4.

If those provisions are adopted, the Federal courts, could exercise, in substance, the power to pass in the first instance on whether a particular person possessed the qualifications for voting, could they not?

Mr. BROWNELL. I wonder if you would restate that, Senator. I lost you there.

Senator ERVIN. The proposed amendments embodied in part 3 and part 4 of S. 83 provide that "district courts of the United States could exercise the jurisdiction given them without regard to whether the parties aggrieved shall have exhausted any administrative or other remedies that may be provided by law." I ask you if the Federal courts could not assume the power under those provisions to determine in the first instance whether a person possessed the qualifications for registering and voting?

Mr. BROWNELL. No; I think the answer is definitely no on that.

Senator ERVIN. Why not?

Mr. BROWNELL. The only substantive questions that would come in this area are those where the Federal Government has the power to act. In those areas where it does not have the power to act, it would not be affected by this legislation at all.

Senator ERVIN. How is the Federal Government going to determine, for example, whether a person possesses the qualifications for registering and was denied the right on account of his color or race, or national origin or religion?

Mr. BROWNELL. Just the way you decide any other question of fact, if it is a Federal question.

Senator ERVIN. What I am getting at is this: Under North Carolina law and I think under the law that prevails in most of the States, there are certain qualifications for registering and voting?

Mr. BROWNELL. Yes.

Senator ERVIN. Such as that the person cannot be a convicted felon who has not had his civil-rights restored, or that he cannot be a person who has been adjudged to be insane, or that he must pass a simple literacy test.

I think you and I both concede that those are reasonable kinds of requirements if properly administered, and they have got to be determined before a person has the right to register and vote.

Now how can those matters be determined except by the State in the first instance?

Mr. BROWNELL. You have two questions in there, it seems to me, Senator. One, of course, is the qualifications are determined by the State, and the Federal Government does not pass on them.

However, the Federal Government does have an interest in the general area. The question is whether or not the State constitution or statute has laid down a qualification, the effect of which while it appears perhaps on the surface to be a qualification to vote, the effect of it, if it is used in such a way, if it is improperly administered in such a way that it deprives the voter, prospective voter, of a Federal right, then the Federal Government does have the right to step in and the Supreme Court has held that a good many times, and there the question of that fact would be decided either by the court or the jury as the case may be just as it would in any other case.

Senator ERVIN. Suppose a man is turned down by a registrar. How is the Federal court going to determine that he has been denied his right to vote, without first passing on the question of whether

he is a convicted felon whose civil rights have not been restored, or whether he has been adjudged insane and not has his sanity restored, or whether he is competent to pass the literary test?

Mr. BROWNELL. The way it has been handled in the past I would assume is to receive evidence on the point and if it is just a question of qualification within the power of the State and it is being properly administered, then they say so in their opinion and say there is no Federal question involved.

Senator ERVIN. But it says here that the Federal court has the jurisdiction to pass on this without regard to whether the party aggrieved shall have exhausted any administrative remedy?

Mr. BROWNELL. That is quite different—quite a different point, Senator. I see now what I think is bothering you there. That has to do with the situation like this.

Let's stick to the Ouachita Parish, La., example that we discussed a little earlier this morning.

Suppose in that case as we found out the 1st of October, that there was a mass refusal en masse to register the Negro voters in that parish.

Senator ERVIN. Let's not take the mass case. Let's take Camden County. I am more familiar with that in North Carolina law, if you will.

Mr. BROWNELL. If it is a substantial case, then the evidence is presented to the Federal court.

Now if it was necessary, we will say, on the 1st of October for the person involved to go through a long series of administrative remedies which might take a couple of years to exhaust, then the Federal right would in fact be destroyed if we were not able to get the matter before a court promptly so that the harm could be prevented before it happens.

That is the type of case that we have in mind.

Senator ERVIN. And the Federal court would issue an order to register?

Mr. BROWNELL. Register or vote, as the case may be.

Senator ERVIN. And in States where no double registration prevails, the effect of that order would be to deprive the State of the right to determine whether its own citizens can vote for State offices, wouldn't it?

Mr. BROWNELL. Only to the extent—and this is so fundamental to this proposal—that a Federal right set forth in the constitutional laws of the United States has been violated, and the only remedy involved in order to prevent the harm from occurring must be prompt.

Senator ERVIN. Ordinarily in North Carolina you can get an administrative remedy before you can get your pleadings drawn for the case in the Federal court.

Mr. BROWNELL. Then that would be much preferable.

Senator ERVIN. For that reason I wonder why you strike down the authority of States in cases where they have proper procedures, and drag State officials into the Federal court, when the party aggrieved has a prompt administrative remedy. The proposed amendments are based on the theory that the State officials are not going to perform their duty, aren't they?

Mr. BROWNELL. No. I would look at it this way, Senator: This does not take away from the States any of their authority to run

proper election machinery. In fact, it would be the hope of everyone concerned, I am sure, that the States would function, and the local communities, in such a way that no one would be deprived of their right to vote.

However, we know from experience that that is not universally true, that there are cases where, as I say, in the mass, people have been deprived of their right to vote on account of their color.

Here we would like to give an additional remedy, without taking any authority away from the States, but the additional remedy to have the Federal Government be able to carry out its promise, the promise being in the Constitution, that people shall be equal under the law and there shall not be discrimination.

Senator HENNINGS. That is an enlargement of the franchise, is it not, General?

Mr. BROWNELL. For the protection of the individual voter; yes.

Senator ERVIN. It is decreasing the power of the States and enlarging that of the Federal Government?

Mr. BROWNELL. I cannot see that it decreases the powers of the States at all.

Senator ERVIN. Suppose a man goes to the registrar to register and the registrar says he is not qualified to vote, that he is a convicted felon who had not had his citizenship restored?

Then he goes into the Federal court and the Federal court says the State authorities are all wrong, that he has been denied the right to vote on account of his color or his national origin.

In that case the Federal Government, the Federal court would be overruling the ruling of the State, would it not?

Mr. BROWNELL. It is just inconceivable to me that that situation could arise, because you still have the fact that he was a felon, under your assumption, and he would be no more entitled to vote by order of the Federal court than he would be by the State court.

Senator ERVIN. I say if there is a disagreement between the State election officials and the Federal court in that instance on that fact the Federal court would be empowered to determine that fact, would it not?

Mr. BROWNELL. I think you are assuming a situation which on the basis of experience does not and will not arise, because we have concurrent jurisdiction, Federal and State, in so many areas, and for all these years that concurrent jurisdiction has been functioning smoothly without situations of that kind arising. I see no more reason why it should arise in this area than in any other area of concurrent jurisdiction.

Senator ERVIN. Aren't these proposed amendments based, in the last analysis, upon the thesis that the States are no longer competent to exercise such concurrent jurisdiction, and that the jurisdiction to determine those matters should be vested in the Federal courts?

Mr. BROWNELL. Definitely not, and any attempt to paint them in such colors, to my mind, would have to be based on a misapprehension completely of their purpose or their effect.

Senator ERVIN. What are you going to do with a situation where the State decides that the man is disqualified to vote on valid State grounds, and the Federal judge decides to the contrary?

Mr. BROWNELL. Why would he decide to the contrary?

Senator ERVIN. He would have to, would he not?

Mr. BROWNELL. No.

Senator ERVIN. Well, let's see.

Mr. BROWNELL. If he is disqualified under proper qualification statute of the State to vote, then he is disqualified in the Federal court just as well as he is disqualified in the State court, and there would be no interference by the Federal Government with that proper authority of the State.

Senator ERVIN. Let's take part 4, subsection (b):

> No person, whether acting under color of law or otherwise, shall intimidate, threaten, coerce, or attempt to intimidate, threaten—

and so on—

> any other person for the purpose of interfering with the right of such other person to vote.

Who is going to pass on whether that person has a right to vote?

Mr. BROWNELL. It will be either a State or Federal court, as the case may be.

Senator ERVIN. Suppose the State decides he has no right to vote because of his failure to meet a literacy test, or because he is a convicted felon, or because he is adjudged insane, and the Federal court disagrees with it and sustains his right to vote by injunctive relief. The Federal court will be deciding questions which are committed by the Constitution to the State authorities by articles II and XVII.

Mr. BROWNELL. In the first place it would never get there because no case would be brought under those circumstances. But I think you are assuming in your question there that the State court would always decide the question on the merits fairly, and that the Federal court always would decide the case not on the merits or fairly. This is quite an assumption.

Senator ERVIN. No; I am not assuming that at all.

Mr. BROWNELL. If they have the same statement of facts before them, they will reach the same results.

Senator ERVIN. I am not even suggesting in my own mind which is right and which is wrong, but I am just suggesting that you have a situation where the State election officials, acting under valid statutes sustained by articles II and XVII of the Constitution, hold that the man does not meet qualifications, and the Federal court decides to the contrary.

Mr. BROWNELL. How would it get to the Federal court, Senator?

Senator ERVIN. Very easily, Mr. Attorney General, under this bill. The man goes to the registrar, and the registrar refuses to register him on the ground that he is a convicted felon or on the ground that he is adjudged insane or on the ground that he does not meet the literacy test. The election officials, acting in a constitutional manner——

Mr. BROWNELL. Now you put in a very important qualification.

Senator ERVIN. They determine that this man does not meet the qualifications prescribed by State law for those entitled to vote for the most numerous branch of the State legislature under article 2 and article 17, and then he goes to the Federal court. He cannot get an order from the Federal court until he satisfies the Federal court that he does meet those qualifications, can he?

Mr. BROWNELL. If the State court has acted constitutionally, as you put in your original statement there before you struck it out,

if the State court has acted constitutionaly in this matter, then there is no occasion to go to the Federal court at all.

If on the other hand the State, local officials of the courts, should disregard the Constitution and use what they would call a qualification just as a coverup for an illegal bar to the person's voting, then it is true, just as under the present law, the Federal court in some instances can pass on that.

So could they if the proposed statute is passed.

Senator ERVIN. Your answer is based upon two asumptions, first, that State officials never make any mistakes, and the Federal courts always abide by the rulings of the State officials when they are right, and the second is that Federal courts never make any mistakes.

But I am not passing on the question of which is right or wrong. I am asking who is going to determine under these bills whether a voter meets the requirements prescribed by State law to vote for electors of the members of the most numerous branch of the State legislature under article 2 and article 17?

Mr. BROWNELL. It would be done exactly as it is under the present law. That situation could arise under the present law. The State decides on the qualifications of the voter subject to the 14th and 15th amendments and the other provisions of the Federal Constitution which I cited in my prepared statement.

The person, if he is aggrieved and thinks that an error has been made, and in fact a Federal right of his has been violated, either wittingly or unwittingly, then of course he can carry the matter to the United States Supreme Court, which under the Constitution has the final say in all of these matters where there may be some conflict of jurisdiction between the Federal and the State Governments.

Senator ERVIN. The fact is, Mr. Attorney General, is it not, that in the last analysis the Federal court is going to pass upon and make the final determination both as to his possession of the qualifications prescribed by State law and his qualifications under the amendments 14 and 15?

Mr. BROWNELL. The answer to that is no.

Senator ERVIN. Then if the State decides that a man is not entitled to vote under State law, you mean to say that under this bill that the Federal court could not order the man registered?

Mr. BROWNELL. Not unless the Federal right of the man had been violated.

Senator ERVIN. Is this not a conceivable situation that would arise under this——

Mr. BROWNELL. No more so than under present law.

Senator ERVIN. But under the present law it is a little different from this. Under present law you have jury trials in matters of that kind. You have a right to cross-examine people. But if the registrar denies a man the right to vote on the ground, according to the belief of the registrar, that he does not possess the qualifications prescribed by State law to vote for members of the most numerous branch of the General Assembly, and the man goes into the Federal court and the Federal court orders him registered, the Federal court is not only deciding that he has been denied the right to vote on account of his race or color or some of these other matters, but it is also deciding that he possesses the qualifications prescribed by State law, isn't it?

Mr. BROWNELL. No, sir; but I do think it is fair to point out that that situation can and does arise under the present laws, and one of the great protections to the Members of the Senate and House over the years has been the fact that the Federal Government continues to function and can function under our form of law which provides that no man shall be deprived of his right to vote on account of race, creed, or color.

Senator ERVIN. I have no objection to the present law. The present law gives the defendant rights. In the first place the present law does not take the taxpayer's money and employ a lawyer for one side of the case.

The present law does not authorize the use of the taxpayer's money to pay the cost of the prosecution. The present law gives the defendant the right to have a jury trial and to have the right to be confronted by the people who make accusations against him, and to cross-examine them, which rights would be denied them under this amendment, would they not?

Mr. BROWNELL. No, Senator.

Do you realize the implications of what you are saying?

You are saying that the Federal Government, because it costs money to have a law enforcement agency, just should not function, because it costs taxpayers money.

Senator ERVIN. No, I did not say that, Mr. Attorney General.

Mr. BROWNELL. This is the implication of what you are saying, and the Federal rights under the civil rights constitutional provisions and laws are just as important as we see it as all the other provisions.

Senator ERVIN. I agree with you.

Mr. BROWNELL. And where there is a public right that has been violated, then the public acting through the duly constituted authorities should see to it that there is a sufficient remedy there for any violation of the law.

Senator ERVIN. Mr. Attorney General, I think you put a wrong implication on my question?

Mr. BROWNELL. I am sorry if I did.

Senator ERVIN. You may have been justified in doing it.

Mr. BROWNELL. Perhaps I misunderstood you.

Senator ERVIN. I think it is necessary for the taxpayers to pay the cost of people charged with criminal prosecutions.

Mr. BROWNELL. You do?

Senator ERVIN. I mean, to pay the cost of prosecutions of people charged with crimes.

Mr. BROWNELL. Yes.

Senator ERVIN. But I do not believe that it is a proper function of the taxpayers to furnish counsel and bear the cost of one side of a civil action, and not furnish counsel and pay the cost of the other side.

Mr. BROWNELL. Your thought of course is that you would repeal those provisions that do that very thing in the antitrust field, the wages-and-hours field and all these others, and would let the crime go ahead and be committed and then we will pay through the nose.

Senator ERVIN. I would not let taxpayers bear the cost of suits for the benefit of individuals.

Mr. BROWNELL. And we won't give to our citizens the very thing which the Constitution promises them, and the very thing which is basic to the maintenance of our democratic form of government.

Senator ERVIN. Now as far as the right to vote is concerned, virtually every suit is going to have to be directed against a State election official, isn't it?

Mr. BROWNELL. It depends on the situation of course.

Yes, take the Ouachita example that we have been using a number of times. There you would endeavor to enjoin the election officials.

Senator ERVIN. That is right.

Mr. BROWNELL. Instead of waiting until the thing had happened and then trying to throw them in jail.

Senator ERVIN. Virtually every suit is going to be brought under this by the Attorney General against a State election official who is acting for the State.

Mr. BROWNELL. Instead of suing 4,000 people criminally.

Senator ERVIN. Well, regardless of that, virtually every suit under this would be brought against a State election official, and so in a sense it is a contest between the Federal and the State Governments.

Mr. BROWNELL. To try and remedy a situation where the State authorities for one reason or another have not protected the civil rights of the citizens; yes.

Senator ERVIN. That last question assumes that the decisions of Federal officials are always correct; does it not?

Sometimes they make mistakes like the rest of us.

Mr. BROWNELL. I would say over a period of 165 years both the State and the Federal courts have been held in the highest esteem by the people of this country, and that one reason they are held in such high esteem is that they do administer justice fairly.

Senator ERVIN. Mr. Attorney General, both of them, being held by human beings, are fallible and sometimes make errors.

Mr. BROWNELL. Of course.

Senator ERVIN. I am just replying to your assumption that Federal folks are always right.

Mr. BROWNELL. But because they make mistakes is no reason why we should not have laws on the statute books.

Senator ERVIN. But the question is this: It is essentially a contest between the Federal Government and the State government; isn't it?

Mr. BROWNELL. Only in this sense, Senator. That the Founding Fathers, at least as I read constitutional history, thought that instead of having a tyrannical or despotic government in this country, it was better to distribute these powers between the Federal Government and the State governments and the local governments and private initiative.

That is a built-in potential conflict, of course.

Senator HENNINGS. May I say this to my learned friend, too. It seems to me that it is not in any wise a contest between the Federal and State sovereignties except where an official is violating his oath of office and where, apparently, as we all know as a matter of common knowledge, there is no disposition on the part of the county attorney as the case may be, the district attorney or anybody——

Senator ERVIN. You are making the same assumption that the Attorney General made that suits are only brought against guilty persons. Having been a long time practicing law I found that a lot of prosecutions have failed both in State and Federal courts.

Mr. BROWNELL. You don't consider that that is a defect in our system, do you, Senator?

Senator ERVIN. No, sir.

Mr. BROWNELL. I don't either.

It would be a sad day if the Government won all its cases.

Senator ERVIN. I would like to get a definite answer to this question: That the suits which these amendments incorporate in parts 3 and 4 of S. 83, in virtually all cases, will be brought by the Attorney General of the United States against a State official acting within the scope of the sovereignty of the State?

Mr. BROWNELL. Never.

Senator ERVIN. Isn't an election official clothed by the State with part of the State's sovereignty when he is empowered by the State to determine whether a voter possesses the qualifications prescribed by law of the State for the right to vote for members of the most numerous branch of the State legislature?

Mr. BROWNELL. That is his duty and his duty also is to see to it that the Federal rights, voting rights, of the citizen are also protected, and the suit would never be brought under the legislation which we are proposing unless the Constitution and laws of the United States have been violated.

Senator ERVIN. In other words, a suit would never be brought unless the laws had been violated?

Mr. BROWNELL. Federal laws.

Senator ERVIN. I believe you told me a while ago that all you would determine would be whether you have a prima facie case, and a prima facie case might fail?

Mr. BROWNELL. Yes, that is, of course, inherent in my statement—that we might make mistakes once in a while.

Senator ERVIN. Mr. Attorney General, fundamentally I object to these two provisions on the ground that I think, despite your argument to the contrary, that they necessarily will result in the Federal courts exercising jurisdiction to determine not only whether a person has been denied his right to vote on account of race or some other matter, but also whether he possesses the qualifications prescribed by State law for the right to vote for the most numerous branch of the legislature, and with that statement I will leave this phase of it.

Mr. BROWNELL. I am sorry I did not make a more persuasive presentation, because I feel very confident that that is a mistaken interpretation of the proposed legislation.

Senator ERVIN. Mr. Attorney General, your presentation is very eloqent, but as far as I am concerned, I have to admit that it is not persuasive or convincing.

Now I have another objection to these two parts, and that is the fact that I have never yet seen a so-called civi-rights bill of modern vintage which did not undertake to give civil rights to some of our citizens by denying essential rights to other citizens, and I think that both of these provisions are subject to that observation.

Mr. BROWNELL. I must respectfully disagree with that.

Senator ERVIN. Let me ask you a few questions about that.

This provision gives the Attorney General the right to bring suits, among other things, for temporary injunctions and restraining orders as well as permanent injunctions.

Ordinarily registration periods in most of the States occur within 5 or 6 weeks before elections, and under the practice which prevails

in the Federal courts, restraining orders are issued upon affidavits; aren't they?

Mr. BROWNELL. Very often; yes.

Senator ERVIN. And applications for temporary injunctions are also issued upon affidavits; aren't they?

Mr. BROWNELL. In the discretion of the judge.

Senator ERVIN. In the normal suit as brought under this procedure, it would be impossible to have a trial on the merits between the time the suit is brought and the election takes place; isn't that so?

Mr. BROWNELL. I think the answer to that would be this, Senator: My experience, at least, in election-law cases in the State level is that that is a matter for discretion of the judge, and that if necessary he brings the parties before him and has a full trial, although that is not required.

Senator ERVIN. But most judges have their court schedules made out for weeks in advance.

Mr. BROWNELL. Under the usual State law, and I imagine the same thing would be true here, where there is a critical time element involved, just as there is in any injunction action which the Federal Government brings now, like in the dock strike and all, the courts arrange the calendar so that those emergency cases can be heard promptly.

Senator ERVIN. As a matter of fact, restraining orders and temporary injunctions are usually issued upon affidavits.

Mr. BROWNELL. Whenever the judge feels it can be done that way, very often the parties stipulate, as you know, that it should be heard on affidavits.

Senator ERVIN. Ordinarily it is done on affidavits; isn't it?

Mr. BROWNELL. I don't think you can say that as a general rule, though.

Senator ERVIN. Do you mean to tell me that when you apply for a temporary restraining order—that is, a restraining order is issued—that is done after hearing witnesses?

Mr. BROWNELL. Of course it depends on the judge, but whenever there is a protest made by one party or the other, and you have a time element involved here, and the only way that it is possible to get the full facts before the court is by testimony, I have seen that done in many cases.

Senator ERVIN. Frankly, I practiced law for 15 years and acted as judge for 15 and I have never yet seen in either a Federal or a State court in North Carolina a restraining order issued on anything except an affidavit.

Mr. BROWNELL. Isn't is true though, Senator—I of course am not familiar with your North Carolina practice but wouldn't it be true—that in most of those cases the parties agreed to that procedure, or were entirely satisfied with it.

Senator ERVIN. No, I would never be satisfied if I represented a defendant, and that is one of the objections I have got to these proposed amendments, these things would be heard on affidavits.

An affidavit is drawn by an attorney for one party, and you can depend on it, he is going to set out the facts in the most favorable light for his client.

When you put in an affidavit, the testimony of George Washington is indistinguishable from that of Ananias.

Mr. BROWNELL. Has that been your feeling about this practice you say you have in North Carolina, that injustices have been done because you have this practice there?

Senator ERVIN. No, I do not say injustices have been done.

Mr. BROWNELL. In North Carolina it has worked all right?

Senator ERVIN. It has worked all right for this reason——

Senator HENNINGS. I believe it would in the other 47 States, too.

Senator ERVIN. In North Carolina we have kept injunctive relief in its proper field, and a temporary restraining order and a temporary injunction issue in North Carolina only to preserve the status quo, pending a hearing on the merits, and a man always gets a hearing on the merits.

We have not attempted to substitute an injunction for a criminal indictment, so it works very well.

Mr. BROWNELL. You do not have an injunction——

Senator ERVIN. No great harm has been done.

Mr. BROWNELL. You don't have any injunction in election cases in order to preserve the right to vote?

Senator ERVIN. Not of this type.

Mr. BROWNELL. It would be a good thing to add, then.

Senator ERVIN. I do not know of any, and to tell you the truth with the exceptions of the ones you have mentioned here, I never heard of any controversies about elections down there.

Mr. BROWNELL. In my home State we have special sessions of our highest court and our intermediate courts called to give injunctive relief in these election cases, where the rights of citizens would otherwise be lost.

Senator ERVIN. Frankly, until I came here this morning, as I said before, I never heard of anybody in North Carolina being denied the right to vote on account of race or color.

Mr. BROWNELL. Well, we consider that one of our functions, whenever we get verified information of this sort, to make it public.

Senator ERVIN. Anyway, don't you agree with me that when you reduce the testimony of George Washington and that of Ananias to cold paper with no opportunity to see their demeanor or conduct, that it is practically impossible to distinguish between them?

Mr. BROWNELL. If we have the choice, we will take George Washington and leave Ananias outside the courtroom.

Senator ERVIN. But you cannot tell which is which?

Mr. BROWNELL. I think I can distinguish.

Senator ERVIN. You could not tell whether John Doe or Richard Roe in an affidavit case was George Washington or Ananias?

Mr. BROWNELL. I really find it hard to understand, Senator, how you can make that statement when for 165 years the courts of this country have functioned in many very delicate areas in these injunction cases on the basis of affidavits, and it has been a very satisfactory method of acting.

It goes back to the early days of equity procedure in England, and to say that you cannot do justice by using that well-tested form of legal procedure really is quite a novel argument.

Senator ERVIN. Mr. Attorney General, I will ask you this: Don't we have a rule of practice which prevails almost universally in the United States? One is that an appellate court can retry the facts in an equitable proceeding which was heard upon affidavits, whereas

where findings of facts are made by a trial court on the basis of witnesses who have appeared in person before the trial court, the appellate court cannot change the findings?

Mr. BROWNELL. And the same thing would be true if this legislation were passed and those same rules would govern.

Senator ERVIN. But the man would be registered and would vote if he got an affirmative ruling, and the case would never be tried on the merits, because the court would say, "Well, the event is already past, and this is a moot question."

Mr. BROWNELL. That is one extremity. We are, however, on the other hand faced with the fact that without this authority in the Federal Government people are disenfranchised en masse by reason of their color.

Perhaps to take a well-tested type of procedure such as we are proposing and apply it in this area is certainly a very conservative approach to the problem.

Senator ERVIN. You do not need this law for most of the States; do you?

Mr. BROWNELL. I would say that the problem is widespread enough to urgently call for action by the Congress at this session.

Senator ERVIN. How widespread is it, so Congress could have some evidence to base it on?

Mr. BROWNELL. The examples we have given you in themselves are, I think, rather indicative of the fact that the problem is a major problem which deserves quick action.

Of course, one purpose that we have in asking you for the establishment of the bipartisan commission is to settle any doubts in anyone's mind as to the extent and scope of the problem.

Senator ERVIN. You have cited 1 parish in Louisiana and 3 precincts in North Carolina, and you think that indicates that the problem is so widespread that we ought to make a drastic change in the laws in this field?

Mr. BROWNELL. Let me put it this way. Of course, this is not based on just a few examples that I have in my prepared statement. There are others which, of course, received a great deal of newspaper publicity during the past few months, so that I would say it was a matter of common knowledge that this is a widespread problem, and I also would not want to leave unchallenged in the record your characterization of the proposed legislation as "drastic" or "new" or "untried," because I think this discussion that we have had this morning indicates that it is a moderate approach, that it only applies in this one area, a well-tested and fair legal procedure for the purpose of insuring the voting rights of the citizens.

My own approach to it is that this being really the basis of our whole system of government, without which we cannot have confidence in organized government, this right to vote, that it should receive the enthusiastic support of everybody to have both the Federal and State governments have complete authority to protect this, you might say our most important and precious of civil rights.

Senator ERVIN. You do not concede that these amendments are based on the thesis that the States are either unable or unwilling to perform their obligations in these connections?

Mr. BROWNELL. Well, evidently they have been unable to in some cases; for example, the examples we have used this morning would

indicate to me that somewhere along the line down there in Louisiana the authorities have been unable to protect the right to vote of the citizen; yes.

Senator ERVIN. And so you abolish any necessity for exhausting any administrative remedy whatever under State law?

Mr. BROWNELL. As I said over in the House when we were discussing this same problem, in the first place, we do not take any authority away from the States, and we would hope that perhaps by calling attention and passing this legislation that there would be renewed and more vigorous efforts on the part of the States and localities to see to it that the civil right is protected.

But if they do not, then I think if we are going to keep our Federal Government functioning we must have adequate authority in the Federal Government to protect this right.

Senator ERVIN. I believe you concede that unless this thing gets down to trial on the merits, as far as the temporary injunction and restraining order is concerned, that the judge could try the case on affidavits, without affording the defendant any opportunity to cross-examine the persons making the charges prior to issuing the restraining order or the temporary injunction?

Mr. BROWNELL. Oh, no, that is not my position at all, Senator. Evidently I have not made myself clear. That is not my position at all.

Senator ERVIN. Let's see if we understand this in the same sense. A restraining order is an order in the nature of an injunction which is ordinarily issued by a court to be in force until they can pass on the question whether there should be a temporary restraining order.

Mr. BROWNELL. Yes, but it cannot be issued arbitrarily. It must be issued only after the judge has satisfied himself that he has got the facts on which to base his actions.

Senator ERVIN. But what I am getting at, Mr. Attorney General, he can satisfy himself of that fact on affidavits?

Mr. BROWNELL. In some cases.

Senator ERVIN. Without any witnesses?

Mr. BROWNELL. In some cases.

Senator ERVIN. He has that power?

Mr. BROWNELL. And he has that power.

Senator ERVIN. And it is well to stop and ponder the question that the law has to be administered by some judges who are wise and some who are unwise, and also to see what abuse can be made of it, isn't that so?

Mr. BROWNELL. We have had 165 years of practice both in the Federal and State courts of giving that authority to judges.

I personally have had many cases. I have lost some of them, I have won others, but I think on the whole justice has been done, and I do not see any reason why it cannot be done here.

Senator ERVIN. Let's go back to this. Under the authority of these amendments, the judge could issue a restraining order or a temporary injunction on the basis of affidavits, without giving the defendant an opportunity to cross-examine the people making those affidavits, couldn't he?

He would be empowered to do that?

Mr. BROWNELL. You are assuming that he would act arbitrarily, Senator?

Senator ERVIN. No, sir; I am not doing that.

Mr. BROWNELL. I do not believe that has been our experience, and I think when you come down to the review powers that are given to our appellate courts to protect against any arbitrary action of that kind, assuming we had such a situation, that it is not a realistic approach to think that that would happen.

Senator ERVIN. I am not asking it on the basis of arbitrariness. My question is this; and it is very simple. That under these amendments, a judge could issue a restrainnig order and a temporary injunction without giving the defendant an opportunity to cross-examine the people making the complaint against him.

Mr. BROWNELL. In the first place, it has never happened, and it could only happen in the case the judge is satisfied that on the basis of the record before him he has the pertinent facts on which to do justice.

Senator ERVIN. Mr. Attorney General, do you tell me that judges never issue a restraining order or a temporary injunction on affidavits without giving the party against whom the restraining order is issued an opportunity to cross-examine those witnesses in court?

Mr. BROWNELL. That is a very different question.

Senator ERVIN. No; that is the identical question.

Mr. BROWNELL. You are asking me if in all the history of the courts of this country there has never been a temporary restraining order issued on affidavits.

The answer of course is yes, as we have said several times this morning, that that is done sometimes, but it is not done unless the judge is satisfied that that method of procedure, which is discretionary on his part, will bring about a just result in the case before him.

Senator ERVIN. If the judge is so satisfied, he certainly has the power under this to take that course, hasn't he?

Mr. BROWNELL. He has the power. He has the power subject to the restraints of the appellate courts.

Senator ERVIN. The case could not be heard by the Federal court in time to do any good?

Mr. BROWNELL. As I say under our State practice we call sessions of the highest court to be sure election cases are promptly taken care of.

Senator ERVIN. You referred to Clinton, Tenn.

I will ask you in Clinton, Tenn., didn't the Federal judge issue an injunction and send a man to jail for 1 year for contempt of court, without a jury trial, and if that same man was not tried on substantially the same charge in the State court and acquitted by a jury?

Mr. BROWNELL. The John Casper case?

Senator ERVIN. Yes.

Mr. BROWNELL. I think that case is in court now and I would prefer not to discuss it.

Senator ERVIN. Was he not tried by the State court under State law for the facts out of which the alleged contempt arose and acquitted by the jury?

Mr. BROWNELL. The case is on appeal now in the Federal courts and under the rules I think I am prohibited from commenting on any aspect of that case.

Senator ERVIN. Don't you know that there was a verdict of "not guilty" returned by a jury when he was tried in the State court upon charges growing out of the same facts out of which the alleged contempt arose?

Mr. BROWNELL. If you make it as a statement, I am sure you would not make it unless you had the facts.

Senator ERVIN. Now if the judge issues a temporary injunction or restraining order and the party is alleged to disobey it, under this procedure the judge can punish that man for contempt without giving him a jury trial, can't he?

Mr. BROWNELL. Only insofar as the common law and the laws of the United States have recognized it over the years.

There would be no change whatsoever in the authority of the courts involved in this legislation.

Senator ERVIN. I will ask you if that is not one of the purposes of this law.

Mr. BROWNELL. No, sir. This law does not change the contempt powers of the Federal courts in one iota.

Senator ERVIN. It brings it under the existing laws of the United States so that the man could be punished for contempt without ever having a right to have the question of his guilt or the facts out of which the alleged contempt arose being heard by a jury, couldn't he?

Mr. BROWNELL. Only to the extent that the equity proceedings of the Federal courts allow that, and have allowed it over the years.

Senator ERVIN. I am asking if they don't allow it, if that is not what they allow?

Mr. BROWNELL. I think that you are attempting to get from me, Senator, unsuccessfully so far and it will be in the future, a statement which tries to put a misleading conclusion on the statement of facts that is before us.

Senator ERVIN. Mr. Attorney General, I frankly do not attempt to mislead anybody.

Mr. BROWNELL. I know you are not, but I think that is the inherent result of this discussion.

Senator HENNINGS. At this point may the Chair make just a brief statement, and I certainly do not want in any way to inhibit the Senator's discussion with the Attorney General in his interrogation. In keeping with custom when the Senate is in session, Senator Mansfield asked for permission for the committee to sit during the session of the Senate today. There was objection made by the distinguished junior Senator from Louisiana, so we are now sitting without permission—I do not want to be too legalistic or technical.

Mr. BROWNELL. You mean this discussion has been unconstitutional?

Senator HENNINGS. I would like to accommodate the Attorney General. He is a very busy man, as you know, and he has come here, and I just wanted to make that observation that we were not given permission, as requested, to sit this afternoon.

However, the committee, at the conclusion of the colloquy and discussion and interrogation, will then proceed again tomorrow morning at 10 o'clock. The Senate will not be in session tomorrow and we will hold hearings again on Saturday all day, so I am just indicating that we are not authorized to sit.

Senator ERVIN. I am sorry there was any objection. I would like to make a statement.

Senator HENNINGS. I did not mean to cut you off.

Senator ERVIN. Mr. Attorney General, I do not want to close on this, but apparently we have to close at this point. I am an advocate, in a sense, and if I seem to be a little enthusiastic, I do not mean

to cast any reflection on you of any kind, because while I disagree fundamentally with some of your conclusions about these things, I do appreciate very much the very fairminded way in which you have presented them.

Mr. BROWNELL. Thank you very much, sir. I have the highest regard for your professional ability, and I hope that nothing I have said here would indicate anything other or that by any of my remarks I have intended to cast any reflections on you or your State. I have high respect for your legal ability.

Senator ERVIN. I presume we would recess at this point?

Senator HENNINGS. If nobody makes objection, Senator Ervin, no technical points will be raised unless the Sergeant at Arms comes over and forcibly removes us from this hearing room. I would like to accommodate the Attorney General and certainly the Senator from North Carolina and the Senator from Colorado.

Senator ERVIN. I am frank to state I have got a good many more questions I want to ask.

Senator HENNINGS. If there is no objection, I think we can proceed.

Senator ERVIN. I would suggest that we come back, because I have got a considerable amount of other questions.

Senator HENNINGS. Knowing the Senator to be a great constitutionalist and also one who has great respect for the rules of the Senate, I raise that point only so the Senator may be advised, and I know that the Senator had nothing whatsoever to do with that.

Senator ERVIN. I did not, I am frank to say. I want these things presented so the folks will know what they are getting.

Senator HENNINGS. By that I don't mean to be critical of any Senator who objects to our sitting.

Senator ERVIN. I have other questions that will take me a good long time, a couple more hours, I imagine.

Senator HENNINGS. Can the Attorney General return tomorrow?

Mr. BROWNELL. I have not checked my calendar, but I will certainly try to accommodate the committee in any way I can.

Senator HENNINGS. If not tomorrow, then at some other time.

Mr. BROWNELL. I am sure I can come tomorrow morning. I will rearrange my calendar.

Senator HENNINGS. There are other witnesses who are here now who had hoped to testify, too, so if the Attorney General's calendar does not permit him to be here tomorrow, there will be others who can testify.

Mr. BROWNELL. Shall we leave it, then, Mr. Chairman, that I will check immediately when I get back to the office, and unless you hear from me otherwise, I will be here at 10 o'clock tomorrow morning.

Senator HENNINGS. Good enough.

Senator ERVIN. I might say that a lawyer's vacation is the time that elapses between the time he puts a question to the witness and the witness answers it.

Senator HENNINGS. The committee will rise and meet tomorrow morning at 10 o'clock.

(Whereupon, at 12:50 p. m., the committee was recessed, to reconvene at 10 a. m. Friday, February 15, 1957.)

CIVIL RIGHTS—1957

FRIDAY, FEBRUARY 15, 1957

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

The subcommittee met, pursuant to call, at 10:05 a. m., in room P-63, United States Capitol Building, Senator Thomas C. Hennings, Jr. (chairman of the subcommittee) presiding.

Present: Senators Hennings, Ervin, and Dirksen.

Also present: Charles H. Slayman, Jr., chief counsel, Constitutional Rights Subcommittee; and Robert Young, staff member, Committee on the Judiciary.

Senator HENNINGS. The subcommittee will please come to order.

At the outset I would like to make this statement from Senator William Langer, of North Dakota, a member of the subcommittee and ranking minority member of the subcommittee.

He is unfortunately in the hospital recovering from an attack of pneumonia, and he sent word that he will not be able to be here but because of his constant interest in civil-rights legislation he will read all transcripts.

I also have the notation he hopes he will be allowed by the doctors to be with us soon.

This morning, Senator Ervin and I are the only ones present so far.

At the conclusion of yesterday's proceedings we were in the midst of an inquiry, pursuing an inquiry——

Senator ERVIN. At least the preamble to it.

Senator HENNINGS (continuing). Of the Attorney General by the Senator from North Carolina.

Have we a transcript of yesterday's proceedings?

We might read the last question and the last answer given and Senator Ervin can resume at that point, if he so desires.

The Attorney General has very generously made arrangements to be here again today and we appreciate that very much.

The last question, Senator Ervin, was—this is not a question, it is an observation.

Senator ERVIN. I want to return for a moment to one thing.

Senator HENNINGS. Have you your transcript here?

Senator ERVIN. I don't believe I need to refer to it for that.

Mr. Attorney General, I want to read an extract from the opinion of Mr. Justice Jackson in *Collins* v. *Hardyman*, reported in the 341st United States Report at 651, the extract is on page 656, as a preliminary to certain questions about these bills.

Justice Jackson said, referring to certain statutes including the parts of subsection (3) of section 1985 of title 42 of the United States Code, which the third part of this bill——

STATEMENT OF HON. HERBERT BROWNELL, JR., ATTORNEY GENERAL OF THE UNITED STATES, ACCOMPANIED BY WILLIAM P. ROGERS, DEPUTY ATTORNEY GENERAL; WARREN OLNEY III, ASSISTANT ATTORNEY GENERAL; AND EDWARD L. BARRETT, JR., SPECIAL ASSISTANT TO THE ATTORNEY GENERAL—Resumed

Mr. BROWNELL. Is that the majority opinion?

Senator ERVIN. Yes. (Continuing:) Undertakes to amend. Justice Jackson said:

> This statutory provision has long been dormant. It was introduced into the Federal Statutes by the act of April 20, 1817, entitled "An act to enforce the provisions of the 14th amendment to the Constitution of the United States and for other purposes."
>
> The act was among the last of the reconstruction legislation to be based on the "conquered province" theory which prevailed in Congress for a period following the Civil War.

As I might digress at this point, I had a geology professor who said he thought the most appropriate thing to call that war was the "un-Civil War."

I continue reading:

> This statute, without separability provisions, established the civil liability with which we are here concerned as well as other civil liabilities, together with parallel criminal liabilities. It also provided that unlawful combinations and conspiracies named in the act that might be deemed rebellious, and authorized the President to employ the militia to suppress them.
>
> The President was also authorized to suspend the privilege of the writ of habeas corpus. It prohibited any person from being a Federal grand or petit juror in any case arising under the act unless he took and subscribed to an oath in open court that "he has never, directly or indirectly, counseled, advised, or voluntarily aided any such combination or conspiracy."
>
> Heavy penalties and liabilities were laid upon any person who, with knowledge of such conspiracies, aided them, or failed to do what he could to suppress them.
>
> The act, popularly known as the Ku Klux Act, was passed by a partisan vote in a highly inflamed atmosphere. It was preceded by spirited debate which pointed out its grave character and susceptibility to abuse, and its defects were soon realized when its execution brought about a severe reaction.

Since the other things are not germane to the question I wish to ask, I won't read them.

Now a portion of this act that is referred to, the Ku Klux Act, is embodied in subsection (3) of section 1985 of title 42 of the United States Code, and you urge Congress to enact part 3 of S. 83 to give the Attorney General the power to enforce by injunctive process this portion of that act, and I quote:

> 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 persons or class of persons of the equal protection of the laws or of equal privileges and immunities under the laws—

then there are other clauses which I will not read, but my question is directed to that clause.

What specific types of cases do you propose as Attorney General to bring under this portion of the act formerly known as the Ku Klux Act?

Mr. BROWNELL. You mean assuming that some factual situation arose that would appear to be a prima facie violation of that section?

Senator ERVIN. You are urging Congress to amend the law so as to allow you as Attorney General of the United States to bring suits for injunctions under this provision of the law.

I want to find out from you first whether you think this provision of the law is constitutional, and second, what defendants you intend to proceed against under this provision of the law, and for what specific supposed wrongs.

That is a three-pronged question so you can take your time in answering.

Mr. BROWNELL. As to what specific defendants——

Senator ERVIN. I will break it up. Do you think that portion of the act I read to you is constitutional?

Mr. BROWNELL. Yes; I believe I am correct, am I not, that there have been prosecutions, criminal prosecutions under that act where the constitutionality of that section has been upheld.

Senator HENNINGS. Mr. Olney may answer if he so desires.

Mr. OLNEY. If I understood the reading of that statute correctly, there was a good deal included in the reading that has since been stricken from the statute by action of the Congress.

There is a portion of the statute which still remains on the books unrepealed.

Senator ERVIN. Pardon the interruption.

What I read in the last portion, of course Justice Jackson referred to the original act which had a lot of other provisions in it.

Mr. OLNEY. That is correct.

Senator ERVIN. But the last portion I read was a verbatim reading from such a recent publication as the 1956 pocket parts of the United States Code.

Mr. OLNEY. That is correct; but in giving the history of the legislation, what Mr. Jackson was describing was the history of the original act, with many provisions which are no longer in it. It is true that there is a portion of that statute which still remains in effect on the books, and there have been cases, both criminal and civil, I believe, in which the remaining portions of the statute have been held to be constitutional.

Mr. BROWNELL. That is what I thought.

Senator ERVIN. I want to read again the portion that is still the law, so that there will be no mistake about it.

The Attorney General is urging Congress to give whoever is occupying the Attorney General's office the power to bring suits in the name of the United States for private citizens to enforce the following provision of subsection (3) of section 1985 of title 42 of the United States Code:

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.

I would like to know first, Mr. Attorney General, whether you consider that provision, which according to its words authorizes actions against private citizens as well as acts of States, is constitutional.

Mr. BROWNELL. I believe the constitutionality has been upheld; yes.

Senator ERVIN. If you are right in that view, then you agree with it, do you?

Mr. BROWNELL. The courts have upheld it as constitutional. I will follow that court opinion, since the Supreme Court decisions are the supreme law of the land.

Senator ERVIN. I do not concur with you on that because this statute in its original form had certain criminal penalties which were struck down flatly in *U. S.* v. *Harris*. I cited the *Collins* v. *Hardyman* case. If you read what is said there, you would have to say Justice Jackson thought it was unconstitutional as applied to civil cases. If you can tell what some members of the Court thought in *Collins* v. *Hardyman*, you are a more confused lawyer than I am.

Mr. BROWNELL. I am glad you have sympathy with some of our hard problems over there. There are very hard, difficult questions involved here.

Senator ERVIN. You are the Attorney General at the present moment, and if you wish to continue, you will certainly be the Attorney General for the next 4 years, so I want to know whether you think this act is constitutional, and whether you are going to act on it on that assumption?

Mr. BROWNELL. What I am going to do insofar as it devolves upon me in my present office to take action is to follow the decisions of the Supreme Court on the constitutionality of these acts, and if they are held constitutional, of course I will take action under them.

If they are held unconstitutional, I will be bound by that also.

Senator ERVIN. I realize as a lawyer that none of us can carry all of the decisions of the courts in our heads. In putting this question to you, I do not attempt to cast any reflection on you as an attorney, because if any attorney could remember all of the decisions of all the courts he would have a most peculiar mind.

Mr. BROWNELL. Isn't that a fact?

Senator ERVIN. I am asking you now if you think, as Attorney General, this is unconstitutional?

Mr. BROWNELL. Senator, as I have tried to say, it is my recollection, and I believe it is accurate—Mr. Olney has the same opinion—that this section has already been upheld as to its constitutionality.

Senator ERVIN. You think that the Congress has the power to enact legislation in a civil field where it is denied the power to legislate in the criminal field?

Mr. BROWNELL. Would you repeat that question, please?

Senator ERVIN. If the Constitution forbids the Congress to provide criminal statutes in a certain field, the area of civil rights, for example, can it have the constitutional power to legislate civil remedies in that field?

Mr. BROWNELL. That is a pretty abstruse question.

There are many cases where it has been done. As you will remember, we discussed yesterday in the antitrust field, it has been routine for more than 60 years, so that certainly in some circumstances there would be no question about that.

Senator ERVIN. In that case Congress legislates both in the civil and the criminal fields?

Mr. BROWNELL. Yes.

Senator ERVIN. I cannot conceive how the Congress would have the power to pass legislation in the civil field in areas which it cannot constitutionally regulate by criminal statutes.

Mr. BROWNELL. I believe there are instances on the books where it has been done, and successfully done.

Senator ERVIN. It would contribute very much to my education as a lawyer if you would kindly advise me as to any instances of that kind.

Mr. BROWNELL. I will be glad to furnish that, sir.

Senator ERVIN. Now since you say you think this is constitutional or are under the impression it has been so adjudged, I ask the question: What types of cases would you, as Attorney General, bring in the event the amendments are adopted, and against what types of defendants?

Mr. BROWNELL. The way we operate over there, Senator, in the Department of Justice, is we do not start with a statute and then go out and try and find a violation of it.

We have instances of prima facie violation of the statutes reported to us, and then we have to study the facts in that particular case and see whether or not it comes within the statute, so that it would be rather misleading for me to attempt to start with a statute and conjure up a set of facts that might come within it. That would be a little backward.

Senator ERVIN. That is true, Mr. Attorney General, when you are operating as a lawyer, but when you are operating as a legislator, you are in a different situation, and you are recommending that we, as legislators, enact a statute which would empower you to enforce this section of the statute by a different process than has ever been permitted before, and I as a legislator would like to know what the condition is that you are attempting to remedy.

I think that when you urge us to pass a statute, you are urging us to exercise our powers not as lawyers but as legislators, and I would like to know what conditions you think are so serious as to require what I call this drastic alteration of the means of enforcement of this statute.

Mr. BROWNELL. That will require reviewing some of the testimony that I gave yesterday. You will remember that in my prepared statement, I gave a number of examples, and the chief one which we discussed yesterday, and which is certainly a very important part of the administration program, is the authority to bring injunction actions in this civil-rights area to prevent, before they happen, a violation of the civil rights of our citizens.

It would be the preventive type of action.

Senator ERVIN. Your amendment is directed to other matters which would cover the situation illustrated by 3 out of 7,500 election officials in my home State, and by the 1 parish in Louisiana.

This does not have reference to that. So I would like as a legislator to know why it is that we are proposing to adopt what I consider to be a very drastic remedy.

Mr. BROWNELL. We can generalize this way I suppose.

If we find that one of these civil rights that is protected now by criminal law were violated, this would give us the option rather than

going the criminal route, to go into the civil court, and protect those rights.

Now it does not increase the number of substantive civil-rights laws. Those remain as is on the books, but it does give us the option of taking the civil court route rather than the criminal court route, for the reasons that we set forth yesterday.

Senator ERVIN. You still have not answered my question though.

What conditions now exist which would justify me as a legislator to make such a drastic—what I consider, you do not agree with me on this—what I consider to be such a drastic alteration in the remedies under this section that I have read?

Mr. BROWNELL. I think one of the most important ones is this mass disenfranchisement of the Negro voter.

Senator ERVIN. You have got a section on that?

Mr. BROWNELL. Outside of the area voting is what you are talking about now?

Senator ERVIN. You have got another section on the voting, "All persons conspiring," and so on.

And you have also got a provision in part 4. This does not have any reference to voting except indirectly, of course. It could cover voting but you have got specific statutes on voting apart from this portion in section 3.

I would like to know as a legislator what kind of actions you think conditions require to be brought under that, and who are to be the parties in such actions.

Mr. BROWNELL. I cannot give you the parties because that would depend on developments, but you would run down the list of civil rights that are protected by law at the present time.

As you know, there are many, and we—whenever the state of facts arose where we thought any one of those civil rights had been violated and it would seem more appropriate to go by the injunction route than the criminal route—that is where we would act.

Senator ERVIN. But you can't specify any particular civil-rights violations that would demand the authority to apply this remedy to this particular subsection.

Mr. BROWNELL. Any of those that are covered by that section.

Senator ERVIN. Can you tell me what is covered by it? That is what I am trying to get at.

Mr. BROWNELL. We will file with you a list of the civil rights of our citizens that are protected by the Federal Constitution, and whenever an occasion arises where we think that any of those rights, which are protected by the Constitution, have been violated, that is the type of case in which we would act.

Senator ERVIN. Mr. Attorney General, I have to work about 14 hours a day, and I am not going to have the opportunity to read that.

I would like to know right now if you could tell me, whether there is any real purpose you have in view in asking Congress to give you the drastic remedy, which I consider drastic though you do not, to enforce this particular subsection, subsection (3) of this statute.

Mr. BROWNELL. I can't be any more explicit than the statutory words that you have read, Senator.

The standard is set up there in the statute, the particular civil right that is protected. We believe that is a constitutional statute, and if we

see any violation of it is about to occur where we could stop it, we would endeavor to do so.

Senator ERVIN. Your thesis that you are changing the remedy from a criminal remedy to a civil remedy or simply adding a civil remedy to a criminal remedy is not valid in this instance because the Supreme Court struck down this identical provision in the Harris case as unconstitutional when it provided for criminal penalties. So that argument does not apply.

Mr. BROWNELL. Are you reading the statute that the Court has held to be unconstitutional?

Senator ERVIN. The Supreme Court held in plain words in the Harris case, when these very acts were made subject to criminal punishment, that this portion of the statute was unconstitutional in its effort to apply criminal remedies to these acts.

Mr. BROWNELL. I have already stated, Senator, that if the Court has held the statute to be unconstitutional, we are bound by that. If any of these civil-rights statutes are constitutional, then we proceed under them. We do not proceed under the unconstitutional ones that are no longer of any force or effect.

Senator ERVIN. It struck down the whole act in that case saying that it was not the function of the courts to separate the situations in which it might have been upheld as applied, for example, to action by State officers, from situations in which it could not possibly apply.

That was a legislative function. You are asking me as a legislator, and you are asking the other members of the national legislative body to pass an act to give you authority to enforce by injunctive process a portion of an act which is phrased in virtually the identical language that the Supreme Court said in the Harris case was unconstitutional as applied to criminal prosecution.

Mr. BROWNELL. I cannot agree with you on that, Senator, because our guiding principle will be that only those statutes, parts of statutes that are constitutional, would be enforced by us, and we would not act in any way contrary to a Supreme Court opinion which holds that a statute or any part thereof that is unconstitutional. I can't be any more explicit than that, I don't believe.

Senator ERVIN. You could give me a little light if you would tell me why you come and ask me as a legislator to give you power to enforce a statute which the Supreme Court declared in the Harris case was unconstitutional as applied to criminal prosecutions?

Mr. BROWNELL. We don't ask for any such thing. I can only repeat the answer, because as I understand it you are repeating the question.

Senator ERVIN. I am repeating the question because I don't believe I have gotten an answer which has given me the light as a legislator as to why I should adopt the suggestion of the Attorney General that I give him the power to enforce by injunctive process a statute which the Supreme Court of the United States held in the Harris case was unconstitutional, when it was enforced by criminal processes.

Mr. BROWNELL. Wouldn't it be a little more accurate for the record, Senator, to say that you have not got the answer you wanted? You got the answer.

Senator ERVIN. Frankly, Mr. Attorney General, I have not got any answer at all, because my question has been this: What classes of cases, specific classes of cases, do you want the Congress to give you the

power to enforce by injunctive process under the first portion of subsection (3) of the section 1985 of title 42 of the United States Code?

Now you have told me, in effect, you would use that to promote righteousness in the future, but I want to know what specific types of cases exist which call for Congress to legislate or give you the power to enforce the statute by——

Mr. BROWNELL. That is a time-honored method of course of inquiry. It came up over in the House hearings there, and I think I would have to give you the same answer that I gave the House subcommittee. I would not last very long as Attorney General if I started conjuring up hypothetical questions and then interpreting——

Senator ERVIN. I do not want you to conjure up anything.

Mr. BROWNELL. The constitutionality of them. I have given you as concisely as I can the guiding principles which would govern our action if we are given this badly needed authority to have civil in addition to the criminal remedies.

Those guiding principles, just to repeat once more, are that first we will follow the decisions of the United States Supreme Court as to whether or not a statute or any part thereof is constitutional; those parts which are constitutional, already we have the authority to proceed criminally under them.

We are now asking as to those parts that are constitutional that we have the right to go into the civil courts for preventive relief, first with the objective of upholding the civil rights guaranteed to our citizens by the Federal Constitution, and, secondly, to do it in a way which will not force us into conflict in the criminal courts with State and local officials, wherever possible.

Senator ERVIN. I want to make it very emphatic, Mr. Attorney General, that I am not asking you to conjure up anything. I think there is too much conjured up about these civil rights.

Mr. BROWNELL. So do I.

Senator ERVIN. I am talking about supposed facts.

Now, yesterday you cited in your statement 3 misdeeds, misconstructions, of election laws by 3 election officials in North Carolina out of the total of 7,500 election officials, as a justification for giving the Attorney General authority to enforce the right to vote by injunction.

I am asking you to give me some specific instance of existing conditions which would justify us in giving you the right to enforce by injunctive relief the first clause of subsection (3) of this statute. I am asking for facts; not conjuring.

Mr. BROWNELL. I think what I should do on that then, Senator, is to file for the record copies of Federal court opinions where these civil rights have been defined, and I would be glad to do that if it is agreeable with the chairman, to file a list of court cases.

Senator HENNINGS. It is agreeable, indeed, with the chairman if it is agreeable with Senator Ervin, if he will consider it sufficient.

Senator ERVIN. I am not asking about law. I am asking where the law is to be used to remedy a situation——

Senator HENNINGS. If you will excuse me, Senator, I think the Attorney General might so file as he has suggested.

Senator ERVIN. I do not object to that. I would be glad to have it. But what I am asking for is not law, not court decisions. I am asking for facts about existing conditions which would justify Congress in granting, for the first time in our history, the injunctive process to the

Attorney General to enforce this particular portion of this third subdivision of this statute.

Mr. BROWNELL. You have to refer to a court decision, it seems to me, to get the full picture, Senator, because those court decisions are the ones which define the particular civil rights that have been adjudged to be enforcible civil rights of our citizens.

Those court decisions will give you a list of the civil rights to be protected. All that our legislation does is to authorize us to use civil remedies to enforce those rights.

There are a long list of them you can find in the annotated statutes by quickly looking through them, but we will file a list of them so it will be in the records of the hearing.

Senator ERVIN. You still have not told me any specific conditions that exist in New York, California, or any of the other 48 States of the Nation which demand such a drastic change in our procedure as this. That is a question of fact, of existing conditions, and I respectfully submit, while you have given answers to my questions, that none of them have been in a legal sense responsive, because I am not asking for law; I am asking for facts.

Now I will proceed. Unless you can enumerate the facts, I will proceed to another point.

Mr. BROWNELL. You have given me an impossible task there to give you all the factual situations that might be involved in the enforcement of these civil rights.

Senator ERVIN. Mr. Attorney General, in my view as a legislator, unless there are some existing conditions which demand a remedy of a drastic nature or any kind of remedy, there is no use in passing a law, to cover something for which there is no need of correction.

Mr. BROWNELL. Senator, this list of cases which we will file with you will show that over the years, and in recent years, also, there have been a great many violations of the civil rights of our citizens, and that they have been so serious and so widespread that, as I say, you will find many cases which not only define them, but as nearly as the courts can, using the criminal powers, they protect.

In practically every one of those cases it will occur to you, I am sure, after you have read them, that it would have been much more sensible, and justice would have been more fairly administered, if the Government had been able to move in the civil courts to protect those same rights.

Very often the criminal remedy is a harsh one. You would be surprised, perhaps, if you have not had an opportunity to look at them, at the long list of violations that have had to be brought into the Federal courts, and, as I say, I am sure you will feel that many of them would have been better handled not only for the individuals but for the protection of proper Federal-State relationships if the civil courts rather than the criminal courts had been called upon to try and protect against those same violations.

Senator ERVIN. That is the trouble, Mr. Attorney General. I want to know some specific examples which give any group of citizens in the United States a civil right to demand that the fundamental law, which has operated well in America since this country was created, should be altered for their special benefit by depriving all of the American citizens, including themselves, of other basic constitutional rights.

Mr. BROWNELL. I imagine this list which we are going to file with you will run into the hundreds, so that you will have plenty of examples.

Senator ERVIN. I am not asking about that. I am asking about what conditions exist in the 48 States of the United States at this particular moment which demand that we make this fundamental alteration in the law, which would deprive American citizens and State officials of their constitutional rights to trial by jury and of their constitutional right to be confronted by their accusers and to have an opportunity to cross-examine before action is taken against them.

Mr. BROWNELL. I am sure that, as a lawyer, you would rather have me give you——

Senator ERVIN. And I might say also the right of indictment by a grand jury.

Mr. BROWNELL. I would say, as a lawyer, I am sure you would expect me to give you the specific examples, hundreds of them, which are illustrative, rather than trying to turn myself into a nationwide FBI and rush out and try to find for you specific examples of situations that may exist in the 48 States. It just does not seem to me to be a reasonable request to make, Senator.

Senator ERVIN. Mr. Attorney General, I am not asking you to turn yourself into an FBI. I am asking you to give me some specific facts with reference to this statute which would indicate what kind of a condition exists which demands that you be given injunctive power in your official capacity, and that other citizens of the United States be deprived of their constitutional and their statutory right to trial by jury, by changing the procedure which has existed since the drawing up of the Constitution of the United States.

Mr. BROWNELL. I submit, Senator, that I am giving you a reasonable answer to your request by agreeing to file with this committee hundreds of sets of facts which will illustrate better than I could do, by giving hypothetical cases, the reasons for our request for this legislation.

Senator HENNINGS. Will that satisfy you?

Senator ERVIN. No; that does not satisfy me because, Mr. Chairman, I think the Attorney General is enacting the role of the preacher that got fired down in the South Mountains of my county. The congregation fired him and he wanted to know why he was fired, and they said, "Well, it is just the way you preach." He said "What is the objection about my preaching? Don't I argufy?"

They said, "Yes; you sure does argufy." He said, "Don't I disputify?" They said, "Yes; you sure do disputify."

He said, "Then what is the trouble with my preaching?" They said, "You don't show wherein."

The Attorney General has not shown "wherein" by revealing any set of facts to justify this drastic alteration in procedure in respect to the first portion of subsection 3 of section 1985 of title 42 of the United States Code. I will leave it at that and go to the next matter.

Mr. BROWNELL. I am very happy to leave it at that, sir.

Senator ERVIN. Yes. You leave me just as ignorant as far as the necessity for this particular provision is concerned as I was when these hearings started yesterday morning.

Senator HENNINGS. Senator, the story you told about the preacher I thought happened in my State. I have heard other people say it happened in Virginia. It must have happened in lots of places.

Senator ERVIN. If a preacher in the South Mountains of Burke County, N. C., and an Attorney General of the United States pursue the same method of expounding, it is quite probable that a preacher in Missouri does likewise.

One more observation rather than a question before I leave this particular phase.

With great reluctance I am compelled to disagree with the Attorney General with respect to the benign nature of the injunctive process as authorized by these amendments as contrasted with the drastic nature of criminal prosecutions. I happen to live in a county that is very sharply divided in political opinions. It sometimes goes Democratic and sometimes Republican. I have a big heart and, under ordinary circumstances, I love all Republicans. However, I am going to make this honest confession: On election day and during the few weeks next preceding election day, notwithstanding my sweet disposition and my big heart, I am not overly fond of Republicans. I regret to say that I know some Republicans who have the same unfortunate attitude toward Democrats. These injunction proceedings would be brought in the weeks before elections when the air is surcharged with political emotion, and when the effort of the Federal Government to supersede the State governments in the field of registering voters and other matters of this nature would be likely to stir up strife and resentment among people who, like myself, entertain the benighted opinion that matters of this kind ought to be settled by local governments.

On the contrary, criminal prosecutions are usually tried some months after the supposed offenses are committed. They are tried not in the hectic and emotional days preceding an election, but they are tried when the emotions created by political controversies have subsided.

They are tried in a court where a calm judicial atmosphere prevails, and where political considerations are negligible. Therefore, I think that the injunctive process which will be brought into play when political tensions are existent will arouse much more antagonism than criminal prosecutions conducted in calm judicial atmospheres.

I realize that people can argue that question both ways, but that is my honest opinion.

Mr. Attorney General, when the Constitutional Convention drafted our Constitution, it inserted in section 2 of article 3 this provision:

> The trial of all crimes, except in cases of impeachment, shall be by a jury.

I believe you would agree with me that that is a good provision; would you not?

Mr. BROWNELL. I think the criminal law should have jury trial; yes. I have always favored jury trial. I will go on record unqualifiedly on that.

Senator ERVIN. Before a person can be put on trial before a petit jury on a criminal charge under our Constitution, he must be indicted by the grand jury if the crime is a felony; does he not?

Mr. BROWNELL. In all cases that are covered. There are some, of course, where you do not have to; petit, for instance.

Senator HENNINGS. In certain States felonies may be proceeded upon by information.

Senator ERVIN. Mr. Chairman, I am not talking about the constitution of the States. I am talking about the Constitution of the United States.

Mr. BROWNELL. There is somewhere where you can proceed by information.

Senator ERVIN. In Federal cases?

Mr. BROWNELL. Yes.

Senator HENNINGS. And State cases?

Mr. BROWNELL. That is right.

Senator HENNINGS. Felonies.

Senator ERVIN. I am more interested in the Constitution of the United States because we are legislators of the United States.

Mr. BROWNELL. I misunderstood you. You said in felony cases?

Senator ERVIN. Yes.

Mr. BROWNELL. I beg your pardon; I misunderstood you there. I do not know of any cases in Federal practice where you can proceed without. I misunderstood.

Senator ERVIN. I don't, either.

Senator HENNINGS. In many States by statute the district or State attorney may proceed by information in felonies.

Mr. BROWNELL. I think that is correct.

Senator HENNINGS. I know it is.

Mr. BROWNELL. California, Mr. Olney reminds me, is one, and Missouri.

Senator HENNINGS. You can proceed on information and belief of the district attorney.

Senator ERVIN. Also, I want to call attention to the provision in the original Constitution about indictment by a grand jury.

Amendment 5: No person shall be held to answer for a capital or otherwise infamous crime unless on the presentment or indictment of a grand jury except in cases arising in the land, naval force, or in the militia.

Also the following provision:

Nor shall be compelled in any criminal case to be a witness against himself.

Then there is another provision to the effect that he has a right to be confronted by his accusers, and I believe you would agree with me that those are wise safeguards where citizens of the United States are charged with crimes of a grade of felony.

Mr. BROWNELL. I think they are a very, very salutary part of the criminal law.

Senator ERVIN. And the right of trial by jury and confrontation by witnesses are also equally as valuable where citizens are charged with misdemeanors.

Mr. BROWNELL. The only comment I would like to make is I would not want the implication to arise that we ever practiced that same type of procedure in the civil courts.

In the civil courts of course you can seek an injunction or declaratory judgment even. In those cases you can accomplish very fine results, but it does not impair the criminal procedures of course.

Senator ERVIN. Some of the people of the United States in some of the States were not even content with the declaration in the Constitution securing the right to trial by jury in criminal cases. For

example, the people in my State held a constitutional convention, and declared that they thought that the right of trial by jury should be made secure in civil cases arising at the common law, which cases involved all existing civil cases except those arising in equity at that time. They passed a resolution refusing to ratify the Constitution of the United States unless and until they were assured that there would be amendments inserted in the Constitution not only protecting the rights of States as set forth in the 10th amendment, but also providing for the right of trial by jury in civil cases where as much as the sum of $20 was involved.

Mr. BROWNELL. I understood you yesterday to say that it was common practice in your courts there, Senator, to have these injunction cases even tried on affidavits.

Senator ERVIN. I will come to that. We don't try injunction cases on the merits on affidavits.

Senator BROWNELL. I think you made that clear.

Senator ERVIN. Pursuant to the attitude taken by the people of my State and the attitude of people in some of the other 12 Colonies, the Congress submitted and the States ratified certain amendments which included these amendments:

Amendment 7: In suits at common law where the values in controversy shall exceed $20, the right of trial by jury shall be preserved.

And also amendment 10, which is not directly germane to my specific point but I would like to put it in the record, which provides—

The powers not delegated to the United States by the Constitution nor prohibited by it to the States are reserved to the States, respectively, or to the people.

Now let us consider the fourth section of this bill, which purports to give the right to injunctive relief in the case of acts now punishable by criminal prosecutions. When you change to the injunctive process and confer upon the Attorney General the power to resort to injunctive process in case of acts heretofore declared crimes, you deny those people who heretofore had the right to trial by jury the right to trial by jury, don't you?

Mr. BROWNELL. No, sir.

Senator ERVIN. Why do you not?

Mr. BROWNELL. For the reasons we went over yesterday in some detail, that this does not in any way supplant the existing Federal criminal procedures.

This is an additional remedy. And as a matter of fact, Senator, I think it would only be fair to point out that at the present time a private individual can go into the Federal court, and does every year, in this very area of civil rights, and gets injunctive relief.

It is only that we are asking that the Government should have this right.

Senator ERVIN. The statute that you are seeking to amend in part 3, is the statute authorizing private suits for damages. Since a suit of that nature is an action in law as distinguished from a suit in equity, the party sued would be entitled to a trial by jury, would he not?

Mr. BROWNELL. We will not take any right that he has at the present time under the criminal law, we will not take away from him by this legislation. This asks for additional and alternative remedies.

Senator ERVIN. We have an old expression down in my country

that you don't have to choke a cat to death on butter. You can shoot a cat too.

Now the difference here is this: When the private individual sues for damages, the defendant has a right under the Constitution and statutes of the United States to have the case tried by a jury, does he not?

Mr. BROWNELL. When he sues for an injunctive relief, he does not.

Senator ERVIN. I was not asking about injunctive relief.

Mr. BROWNELL. But you were implying that that was the exclusive remedy.

Senator ERVIN. Mr. Attorney General, you and I were taught in law school that witnesses should give responsive answers to questions.

Now I want to get a responsive answer to my question.

Mr. BROWNELL. I only add something that you perhaps would not want in the answer, I will concede that, but I only do it for the sake of clarifying it and having the record straight.

Senator ERVIN. Mr. Attorney General——

Mr. BROWNELL. And where a yes or no answer will not give a correct impression or a complete answer, it is necessary for me to add something besides the yes or no.

Senator ERVIN. But you did not add. You substituted. You substituted an unresponsive answer.

Now I do not mind you telling me anything, but I would like to get some answers to my questions. Here is my question, which you have not answered yet.

Mr. BROWNELL. I will certainly try my best to answer it.

Senator ERVIN. You have not already answered it.

The statute which you are attempting to amend by the amendment set forth in part 3 of this bill gives a private individual a right to bring a civil suit for damages.

Now if that private individual brings that civil suit for damages, the defendant would be entitled to have that suit tried by a jury, and would have a right to cross-examine the plaintiff and the plaintiff's witnesses, wouldn't he, in order that the jury might have the benefit of such cross-examination in passing on the evidence?

Mr. BROWNELL. It would of course depend on the facts, but in a case under the present law where he is entitled to a jury trial in an action for damages, that would not be in anyway changed by the legislation which we are proposing.

We would not take it away if he has it now.

Senator ERVIN. Mr. Attorney General, I am going to ask you for the third time a question of extreme legal simplicity, and I am going to admit in so doing that you are an expert witness in the field of the law and in my opinion competent to give a very direct and responsive answer to that question.

I say if a plaintiff should bring, a suit to recover his individual damages under the statute which you are asking us to amend in part 3 of the bill, that the defendant would be entitled to have that case tried by a jury on the merits in an action in which he would have the right to be confronted and to cross-examine the plaintiff and his witnesses, wouldn't he?

Mr. BROWNELL. Is it your opinion that he would?

Senator ERVIN. I am asking you.

Mr. BROWNELL. As far as I can tell, he would, under present law.

Senator ERVIN. That is what I think is correct.

Mr. BROWNELL. And that would not be changed in anyway by the legislation.

Senator ERVIN. Mr. Attorney General, you say that would not be changed?

The statute would not be changed——

Mr. BROWNELL. And the result would not be changed.

Senator ERVIN. Oh, yes, the result would be changed in all due respects.

Mr. BROWNELL. I would like to follow that up. I do not want to question you but I would like to know how it would be changed.

Senator ERVIN. Let me ask you this: You propose to add to that individual remedy where a jury trial in a civil case would be permitted or required, if the defendant elected, you propose to say that the Attorney General can bring a suit for that same private individual, and obtain redress, which redress I construe would include the right to recover the damages to that individual.

Don't you so construe it?

Mr. BROWNELL. If he is entitled to a jury trial he would get it still.

Senator ERVIN. I am not talking about jury trials, now.

Mr. BROWNELL. Oh, you have changed—whoops, what are we on now?

Senator ERVIN. You say there is no change in the remedies?

Mr. BROWNELL. That is correct. There is an addition to it but no change in the existing remedies.

Senator ERVIN. But you could bring a suit under your act for both the damages and for an injunction, couldn't you?

Mr. BROWNELL. If we apply for damages, then the regular rules would apply.

Senator ERVIN. And the regular rules——

Mr. BROWNELL. Now if we apply for injunctive relief then you would not have a jury trial.

Senator ERVIN. The regular rules in equity procedures are that where you are entitled to sue for injunctive relief, you could recover incidental damages in the trial; isn't that correct?

Mr. BROWNELL. Whatever the equity rules are would apply.

Senator ERVIN. So you bring an equity procedure as Attorney General in lieu of this private proceeding that now is authorized, and you ask for equity relief and by asking for equity relief you could recover incidental damages for the benefit of the private individual?

Mr. BROWNELL. I cannot quite see that that would apply here in the civil-rights area.

Senator ERVIN. Well, why would it not?

You can get relief if the man himself is entitled to it.

Mr. BROWNELL. We can assure you, Senator, that we will zealously guard the rights of our citizens to a jury trial wherever it is guaranteed to them by the Constitution or the Federal statutes. We will not go against that, and the courts would not allow us to if we tried it.

Senator ERVIN. You ask us to substitute, or at least to add on——

Mr. BROWNELL. That is a big distinction there. We are not asking for a substitution.

Senator ERVIN. I disagree with you, Mr. Attorney General, for this reason: Now you take the situation, the law does not allow 2 recoveries for 1 wrong, and if the private individual brings a suit for damages, then the Attorney General cannot bring a suit for damages.

Or if the Attorney General brings an equitable proceeding and recovers incidental damages for the benefit of the private individual, the private individual cannot thereafter bring another action.

Mr. BROWNELL. I would have to disagree.

Senator ERVIN. A private individual would be foolish to bring a suit at his own expense when he can get the Attorney General to bring one for him, and if the Attorney General brings a suit for equitable relief, the private citizen would not bring the action, so as a matter of practice your remedy in many cases would supplant the other existing remedies?

Mr. BROWNELL. I would have to disagree with that in toto, Senator. The best example I could give you out of existing practice would be, I guess, in the antitrust field where they act in complementary fashion, and there are many instances in our law where for the same wrong there are both legal and equitable relief.

Senator ERVIN. Yes, but if you get the legal relief for the man in antitrust suit, he could not bring a suit.

Mr. BROWNELL. Oh, yes; it is done every day.

Senator ERVIN. He could unless——

Mr. BROWNELL. Based on the same facts he can bring his own suit and it is done all the time.

Senator ERVIN. Mr. Attorney General, you are taking the position that a private individual can collect damages for the same wrong twice, once in a proceeding brought by himself and again in a proceeding brought by the Attorney General?

Mr. BROWNELL. No. I am taking the position that the private individual can sue for damages, and the Attorney General, based on the same set of facts, could apply for equitable relief, such as an injunction.

Senator ERVIN. You take the position that your amendment is not broad enough to allow the Attorney General to recover damages?

Mr. BROWNELL. There might be cases where that would be done.

Senator ERVIN. I am not asking you whether it might be done. I am asking you what the amendment authorizes to be done.

Mr. BROWNELL. If it were damages, there would be a jury trial.

Senator ERVIN. It says in very simple language that the Attorney General can bring a suit in the name of the United States or for the benefit of the party in interest to obtain redress.

Mr. BROWNELL. Yes.

Senator ERVIN. Now, the word "redress" includes all kinds of remedies, I would think, including injunctive relief.

Don't you know the proper construction put on that would say that the Attorney General, among other things, could recover for the benefit of the private individual the damages he sustained?

Mr. BROWNELL. I would think so, yes; but I do not think we would do it if the individual had done it for himself, because there you would be——

Senator ERVIN. I don't think the law would allow you to.

Mr. BROWNELL. I don't think so, either.

Senator ERVIN. But you are offering this remedy because the individual, you say, is not competent or financially able to sue?

Mr. BROWNELL. I want to make clear again that the main place that we would come in would be by way of injunctive relief. There is where the most good, I believe, could be done. It could not exclude the other situation where a person may be intimidated or for other reasons unable to bring his own action, we might want to protect him by this type of suit.

Senator ERVIN. If your plain purpose is to obtain injunctive relief, and you are not desirous of recovering damages for the benefit of the private individual, would you object to an amendment to these sections to provide that the remedies should be restricted to injunctive relief?

Mr. BROWNELL. I would object to such an amendment, yes, because I think there might well be cases where we could protect the individual better by the other type of suit, where he, because of economic pressures that are forced on him, something of that sort, is not able to bring the action.

Senator ERVIN. Now, Mr. Attorney General, you do not propose—you say that this remedy is just in addition?

Mr. BROWNELL. Is just what?

Senator ERVIN. Is just an additional remedy?

Mr. BROWNELL. Yes, that is right.

Senator ERVIN. And you don't propose to ask for injunctive relief and prosecute a man criminally for the same act; do you?

Mr. BROWNELL. For the same act as what?

Senator ERVIN. Under these statutes do you propose to sue a man civally and also prosecute him criminally for the same act?

Mr. BROWNELL. Could you give me an example of what you have in mind there?

Senator ERVIN. Here is an election official who it is said is discriminating against a man on account of his race.

Do you propose to have that man indicted in a criminal prosecution, and then also sue him for equitable relief in a civil case?

Mr. BROWNELL. I think just as we do in the antitrust cases, we might in an extreme case not only sue him criminally but at the same time ask for an injunction against further criminal action which violates civil rights in a community.

Senator ERVIN. You argue mainly that the reason you want this change made, which as I pointed out not only where the plaintiff demands the right of indictment by a grand jury——

Mr. BROWNELL. That of course I disagree with.

Senator ERVIN. Well, I know, but it is like this, Mr. Attorney General. If there were 2 roads from here to Baltimore and 1 of them was well paved and straight and the other was crooked and wandered all over the face of the earth, don't you think the people going to Baltimore would travel a good straight paved road instead of the crooked one, as a general proposition?

Mr. BROWNELL. Well, I would think, if I get the analogy, that the civil remedy which we are seeking here would be the fine paved road.

Senator ERVIN. I would imagine so.

Mr. BROWNELL. And that it would be less drastic, but it would in many cases effect sure, faster, and more equitable justice, but that does not take away the other road.

Senator ERVIN. Well, a man would not go to Baltimore on both roads on the same trip; would he?

Mr. BROWNELL. Well, if there was a detour, he would. He might start on one and get detoured.

Senator ERVIN. You say there is no detour on this equitable road?

Mr. BROWNELL. I would like to have it in case of an emergency.

Senator ERVIN. I think you will agree with me in a suppositious case a man would not undertake to go to Baltimore on both roads.

Mr. BROWNELL. In an ordinary case we could save him a lot of trips and a lot of hazards if we could take the straight paved road.

Senator ERVIN. That is right.

Mr. BROWNELL. That is what we are asking for, is a straight paved road.

Senator ERVIN. From the standpoint you advocate, that is true, but in doing what you consider to be legally righteous, you would give a new remedy which, for all practical purposes, would supplement existing remedies which give an individual a right to be indicted by a grand jury and tried before a petit jury and to be confronted and have the right to cross-examine his accusers; wouldn't you?

Mr. BROWNELL. You would rather have us send him to jail than to get an injunction against him?

Senator ERVIN. I would rather have a man given an opportunity to have the spirit and the letter of his constitutional rights observed.

Mr. BROWNELL. And abolish the law of equity, that is what it amounts to.

Senator ERVIN. No, I am not abolishing the law of equity. I think that the law of equity ought to be confined to its proper sphere, and not be used as a device to deprive people of their basic constitutional rights.

Mr. BROWNELL. So do I.

Senator ERVIN. And my objection to part 3 and part 4 of these amendments is that they take and pervert the use of equity from its accustomed field in order to deprive American citizens of their constitutional rights of indictment by grand juries, of trial by jury, and of the right to confront and cross-examine their accusers.

Mr. BROWNELL. You may be interested to know, Senator, that if you take that position, you will be in favor of repealing 28 different laws that are already on the books, statutes which authorize injunctive relief by the United States Government in these cases to prevent crimes.

Now let me read them off, there are 28 of them:

Antitrust laws, restraining violation (by U. S. attorney, under direction Attorney General) (15 U. S. C. 4).

Associations engaged in catching and marketing aquatic products restrained from violating order to cease and desist monopolizing trade (by Department of Justice) (15 U. S. C. 522).

Association of producers of agricultural products from restraining trade (by Department of Justice) (7 U. S. C. 292).

Atomic Energy Act, enjoining violation of act or regulation (by Atomic Energy Commission) (by Attorney General) (42 U. S. C. 1816).

Bridges over navigable waters, injunction to enforce removal of bridge violating act as to alteration of bridges (by Attorney General) (33 U. S. C. 519).

Clayton Act, violation of enjoined (U. S. attorney, under direction of Attorney General) (15 U. S. C. 25).

Electric utility companies, compliance with law enforced by injunctions (by Federal Power Commission) (16 U. S. C. 825m).

False advertisements, dissemination enjoined (by Federal Trade Commission) (15 U. S. C. 53).
Freight forwarders, enforcement of laws, orders, rules, etc., by injunctions (by Interstate Commerce Commission or Attorney General) (49 U. S. C. 1017).
Fur Products Labeling Act, to enjoin violation (by Federal Trade Commission) (15 U. S. C. 69g).
Enclosure of public lands, enjoining violation (by U. S. attorney) (43 U. S. C. 1062).
Investment advisers, violations of statute, rules and regulations governing, enjoined (by Securities and Exchange Commission) (15 U. S. C. 80b-9).
Gross misconduct or gross abuse of trust by investment companies, enjoined (by Securities and Exchange Commission) (15 U. S. C. 80a-35).
Use of misleading name or title by investment company, enjoined (by Securities and Exchange Commission) (15 U. S. C. 80a-34).
Violation of statute governing, or rules, regulations, or orders of SEC by investment companies, enjoined (by Securities and Exchange Commission) (15 U. S. C. 80a-41).
Fair Labor Standards Act, enjoining of violations (by Administrator, Wage and Hour Division, Department of Labor, under direction of Attorney General, see 29 U. S. C. (204b)) (29 U. S. C. 216 (c), 217).
Longshoremen's and Harbor Workers' Compensation Act, enforcement of order by injunction (by United States attorney, see 29 U. S. C. 921a) (33 U. S. C. 921).
Import trade, prevention of restraint by injunction (by United States attorney, under direction of Attorney General) (15 U. S. C. 9).
Wool products, enjoining violation of labeling act (by Federal Trade Commission) (15 U. S. C. 68e).
Securities Act, actions to restrain violations (by Securities and Exchange Commission) (15 U. S. C. 77t).
Securities Exchange Act, restraint of violations (by Securities and Exchange Commission) (15 U. S. C. 78u).
Stockyards, injunction to enforce order of Secretary of Agriculture (by Attorney General) (7 U. S. C. 216).
Submarine cables, to enjoin landing or operation (by the United States) (47 U. S. C. 36).
Sugar quota, to restrain violations (by United States attorney under direction of Attorney General, see 7 U. S. C. 608 (7)) (7 U. S. C. 608a-6).
Water carriers in interstate and foreign commerce, injunctions for violations of orders of ICC (by ICC or Attorney General) (49 U. S. C. 916).
Flammable Fabrics Act, to enjoin violations (by Federal Trade Commission) (15 U. S. C. 1195).
National Housing Act, injunction against violation (by Attorney General) (12 U. S. C. 1731b).

Senator ERVIN. I will ask the reporter to go back and read my question to see whether I got an answer to it.

(Question read.)

Senator ERVIN. There seems to be no question about it.

Senator HENNINGS. That is the last question.

Senator ERVIN. Mr. Attorney General, let's see if we can agree. Under the Federal law we would have three types of injunctive relief that are mentioned in the rules governing injunctions, one is a restraining order.

Mr. BROWNELL. Yes.

Senator ERVIN. The other is a "temporary injunction" that is the term used in the rule?

Mr. BROWNELL. Yes.

Senator ERVIN. The third is the permanent injunction.

Mr. BROWNELL. I think that is exactly right.

Senator ERVIN. I will ask you if we can't reach 100 percent agreement on this. A restraining order is an order granted to maintain the subject of controversy in status quo until the hearing for application for a temporary injunction?

Mr. BROWNELL. I am still with you.

Senator ERVIN. O. K. We will go over with the next one.

Senator HENNINGS. That is 33⅓ percent.

Senator ERVIN. Now, the second one. The term "temporary injunction" is synonymous with preliminary injunction and interlocutory injunction; isn't it?

Mr. BROWNELL. Yes, I think all those terms are used somewhat interchangeably.

Senator ERVIN. I will ask you this: If in orthodox equitable procedure, if the sole purpose of a temporary injunction, is to maintain the cause in status quo until the trial can be had on the merits. We are 100 percent in agreement on that.

Mr. BROWNELL. Still with you.

Senator ERVIN. Let's see if we don't agree on the third. I do not have a legal definition here. But I think I would say permanent injunction is the type of injunction which is issued as a part of the final judgment and at the conclusion of the trial portion of the proceeding is concerned.

Mr. BROWNELL. Yes.

Senator ERVIN. I have made the charge first—I will ask you if you cited about 28 cases I believe in which you say the Federal statutes authorize the use of equitable remedies?

Mr. BROWNELL. Yes, sir.

Senator ERVIN. I will ask you——

Mr. BROWNELL. To enforce criminal laws.

Senator ERVIN. Yes. I will ask you if there is a single one in those 28 cases which does not confine the use of equitable remedies to their orthodox purpose insofar as restraining orders and temporary injunctions are concerned to preserve the status quo of the controversy until a trial can be held on the merits and it can be determined after a trial on the merits whether a permanent injunction should issue?

Mr. BROWNELL. The answer is "No."

Senator ERVIN. Which ones are they?

Mr. BROWNELL. They all allow the full equitable remedies to be used.

Senator ERVIN. Do they take and grant complete relief by restraining order in those proceedings?

Mr. BROWNELL. Well, by your own definition they would not do it in the temporary restraining order.

Senator ERVIN. That's what we are getting at.

Mr. BROWNELL. They may have to do it by temporary or permanent injunction.

Senator ERVIN. That's the point I am getting at. I don't profess to be an expert in this field, but I have tried to learn a little bit about it and I do not believe that you can point out a single instance in any of those 28 cases where the statute either contemplates or intends that the injunctive process in the form of a restraining order or in the form of a temporary injunction, shall be used for any purpose save that of maintaining the existing status quo until the trial can be had on the merits and it then be determined after trial on the merits whether permanent injunction should issue.

Mr. BROWNELL. Take the orthodox antitrust case, that is a clear refutation of that statement. Senator.

Senator ERVIN. You don't mean to say that they grant complete remedy?

Mr. BROWNELL. Permanent injunction. For example, the oil companies are still restrained by permanent injunctions granted in the original antitrust cases over a half century ago.

Senator HENNINGS. 1908, I believe.

Mr. BROWNELL. We still enforce it.

Senator ERVIN. You are squirrel hunting and I am looking for rabbits. That's the trouble that we're having. Here's my fundamental objection. Can you point out a single one of those statutes which authorizes the court to grant the final relief prayed at the start of the case by a restraining order or by a temporary injunction?

Mr. BROWNELL. Will you repeat that?

Senator ERVIN. Can you point out a single one of the 28 cases in which the act of Congress authorizes the injunctive relief in criminal cases which permit the court to grant what is in effect the final relief either by a restraining order or by a temporary injunction?

Mr. BROWNELL. Yes; all 28 of them. That's the very purpose of them. That's why I cited them.

It's a normal procedure for the Federal Government.

Senator ERVIN. You mean to tell me that it is a normal procedure under those statutes to issue a restraining order which will grant the man the relief which he is entitled to receive at the conclusion of the trial on the merits?

Mr. BROWNELL. No.

Senator ERVIN. Other than to maintain the existing status quo?

Mr. BROWNELL. No. You have to go through the procedure. Sometimes you go right for the permanent injunction. Sometimes you go for a temporary injunction. Sometimes in cases of emergency you go for the restraining order and each one has the separate function which you outlined rather accurately a few minutes ago.

Senator ERVIN. You would not be satisfied in this case to put the injunctive process in, so far as the temporary injunction is concerned to the orthodox use to maintain the existing status quo?

Mr. BROWNELL. We would want to use all three as needed.

Senator ERVIN. The existing status quo in election cases would be this: the registrar refuses to register the man and the existing status quo would be that the aggrieved party would be unregistered and not entitled to vote.

You wouldn't be willing to have this bill amended so as to provide that the restraining order that you seek to have authority to get would just maintain the existence of existing unregistered state of that voter, would you?

Mr. BROWNELL. No, I think I can clarify this line of discussion quite a bit if I give you 2 or 3 examples of how it works. You see at the present time, in these election cases which you are now mentioning the individual has the right to obtain equitable relief. Let's just see how that works because it does use all these 3 methods that you mentioned in 1 case, the name for the record is Byrd against Brice. 104 Federal Supplement 442, the United States District Court in Shreveport, La., found that the registrar of voters had discriminated against the Negro plaintiffs in administering the voter qualification law. When it came to relief the court refused to order the registrar to register the plaintiffs because it felt that the complainants had not properly been qualified, under the State law, which was a job for the registrar. But the court did issue a general injunction directing the

registrar to administer the laws so as not to discriminate because of race.

He turned down the stay but did grant a permanent injunction. Then in the case of Williams against McCulley (128 Fed. Sup. 897), a 1955 case, a three-judge court in Louisiana denied relief to plaintiffs because they failed to prove that the voter qualification laws were administered in a way which penalized Negroes more than other citizens. After hearing the evidence in that case they did not issue a temporary restraining order. In the third case, Thorton against Martin, a recent case, the United States District Court for the Middle District of Georgia after hearing counsel, denied a temporary restraining order, but went on to find discrimination based on race and issued an elaborate injunction so that you see, under present Federal practice in these election cases where the plaintiff is a private individual, it works very well to use this equitable injunction and they use the temporary restraining order, the temporary injunction and the permanent injunction and we are asking that Uncle Sam be given the same equitable remedies that private individuals now have.

Senator ERVIN. You contemplate under this though that when the court issues a restraining order, or temporary injunction, it shall order the plaintiff to be registered?

Mr. BROWNELL. May I ask that question be repeated?

Senator ERVIN. You contemplate that under the proposed procedure that when the court issues the restraining order or temporary injunction, it shall issue a restraining order or temporary injunction which will enforce the man's alleged right to be registered?

Mr. BROWNELL. Yes, where proper under normal equitable principles.

Senator ERVIN. That's the point I'm making——

Mr. BROWNELL. That may make it unnecessary to go through the criminal route. We may be able to solve the whole problem that way.

Senator ERVIN. That will make it impossible to get a trial on the merits because the election will come along in a few days and the man will vote and then if the registrar tries to get a trial on the merits the court will say "this is a moot proposition, the man has been registered and voted and the election is gone and there is nothing before us."

Mr. BROWNELL. You are assuming that the judge will act arbitrarily. As a matter of fact these citations of cases show that the judges acted very fairly. When they had the proper facts before them they issued the injunction or restraining order; when they didn't have enough information they threw the case out. That is exactly what would happen.

Senator ERVIN. I think fundamentally we do not agree on this point. I do not think that the wisdom of a proposed law should be determined by the manner in which a good man can possibly administer it; but that its wisdom ought to be determined by the manner in which it may be abused by a bad man.

Mr. BROWNELL. Then that would mean you practically have no law at all if you went on that assumption. You wouldn't have an Attorney General and I wouldn't have to worry about it.

Senator ERWIN. We would have law that would conform to the notions of our ancestors. Our ancestors were so distrustful of the discretion of judges that they adopted a written constitution securing the

people's right to be indicted by a grand jury and securing the people's right to have a trial by a petit jury and securing the people's rights to confront their accusers and have the right to cross-examine them because they did not trust the discretion of judges.

Mr. BROWNELL. I think in order to be sure to make the point, I should put in the record again that there is nothing in this legislation that by any stretch of the imagination could take any of those constitutional rights away, not a single thing and I challenge you to find anything in here that would conflict in any way with any constitutional rights of citizens, but in fact the opposite is true. It would give meaning and force and effect to those constitutional rights of our citizens and allow us to enforce them in the courts in a fair and equitable way and nobody will be deprived of any constitutional rights.

On the other hand, they will have a chance to have them exercised on their behalf by the Federal Government and that's one of the main purposes of the Federal Government to see to it that those constitutional rights are meaningful.

Senator ERWIN. You illustrate the fact that you put supreme confidence in all judges which is a confidence that our ancestors did not repose.

Mr. BROWNELL. No; I would not go along with that statement either, Senator. I believe that our Federal system of justice as well as our State systems in this country have operated better than any other country in the world and I am very proud of them and I think that by and large over the years every citizen has had in his own daily experience the feeling of thankfulness that we have them there and that they decide things on the merits.

We have safeguards in our Constitution to prevent excesses. We have appellate courts to prevent any mistakes that are made in the lower courts. It is a very splendidly constructed system and I am proud of it, and I think this the way to give them more authority to carry out what we promised the people when we wrote the Constitution.

Senator ERVIN. It certainly gives them a lot of authority. I agree. Because until these amendments are passed we have a system under which the State administrative procedures stand. Under these amendments, however, such procedures can be stricken down by the discretion of a judge. If a judge happens to be not too wise, or not too well informed, or to be a fanatic—and I have seen a few such—he can destroy the State law by the exercise of his discretion.

Mr. Attorney General, I think you agreed with me that whether the equitable remedies to be authorized by these amendments would be invoked by the Attorney General is a matter of discretion. Is that not true?

Mr. BROWNELL. As I said yesterday, it is true.

Senator ERVIN. So we have this kind of a situation.

Mr. BROWNELL. It is true of every law.

Senator ERVIN. No; it is not true of every law. There are a lot of laws that give people specific rights. According to law they can go and demand such rights as a matter of right, and if they can establish their case they can get such rights and no power on earth can deprive them of such rights.

Mr. BROWNELL. Nothing in this legislation would deprive them of it. As I see it you, an ex-judge, do not have confidence in the judicial

system of this country, and I am really amazed that you would take that point of view.

Senator ERVIN. Mr. Attorney General, I have so much confidence in the judicial system of this country with the basic constitutional rights which the people of America have under the Constitution, I cannot possibly see the wisdom of adopting a statute which in practical effect will destroy the rights of the people to indictment by a grand jury, trial by a petit jury, and the right to be allowed to confront and cross-examine their accusers. Those rights are so sacred to me I wouldn't take them away from any American citizens.

Mr. BROWNELL. Each time you say that I have to say, so the record will be complete, that this program does not do that and you have not introduced an iota of evidence that it does.

Senator HENNINGS. Will the Senator yield for one question to the Attorney General?

Isn't it true that when the Colonies separated from the mother country and became the United States of America, did we not incorporate the British common law?

Mr. BROWNELL. Yes.

Senator HENNINGS. And did we not do so in spite of the fact that there was a judge, for example, such as the notorious Judge Jeffreys in the British judicial system? We did incorporate the British common law, did we not?

Mr. BROWNELL. Yes; we did. That is a good point.

Senator ERVIN. In that connection, when the people of America adopted and drew up the Declaration of Independence, to set forth the reasons why they were separating themselves from England, they set forth in that Declaration as one of those reasons the fact that the King had deprived them of the right to trial by jury, did they not?

Mr. BROWNELL. Yes.

Senator ERVIN. And yet these proposed amendments will deprive the American people in practical operation of their right to trial by jury, won't they?

Mr. BROWNELL. You are 100 percent wrong on that, Senator, I must say.

Senator ERVIN. Mr. Attorney General, you say I am 100 percent wrong?

Mr. BROWNELL. Just 100 percent.

Senator ERVIN. When I say that the substitution of equitable remedies for legal and criminal remedies will deprive the people of the right to a trial by jury, sir?

Mr. BROWNELL. This doesn't substitute. You yourself said so.

Senator ERVIN. I didn't say so. I said if there are two roads to Baltimore, a man will try to travel the easiest one. He will not try to travel both. You advocate this bill establishing equitable remedies. You said yourself the reason for the passing of the law was you thought this was a more benign way of handling the situation than having criminal prosecutions.

Mr. BROWNELL. Don't you?

Senator ERVIN. I do not. I will tell you why. We have agreed several times that under this law the question whether or not the equitable remedies shall be invoked at all under these amendments is to be determined according to the discretion of the temporary occupant of the Office of the Attorney General of the United States.

Mr. BROWNELL. That's pursuant to the Constitution just as much as the other is. They are alternatives.

Senator ERVIN. If this bill is passed and the Attorney General nods his head from the left side to the right side to signify that there will be no suit brought under this bill, then in that event, the State laws prescribing administrative remedies will stand up and remain in full force and effect; whereas, if the Attorney General nods his head up and down to signify that there will be an invocation of the equitable remedies to be authorized by these amendments, then and in that event the State statutes prescribing administrative remedies fall to the ground and become wholly inoperative for the particular case. That is not a government by law. It is not even a government by men. It is a government by the nod of a temporary occupant of the Attorney General's office.

Mr. BROWNELL. Again I will have to score you zero, Senator, because this whole program wouldn't give me an iota of authority that was not subject to the final check of the Federal judiciary. It is the Federal courts that will have these decisions and not the Attorney General. That is just as elementary in your system——

Senator ERVIN. Now wait a minute. I will have to say I rate you about 99.9 percent wrong on that if we are to grade each other.

Mr. BROWNELL. I am one-tenth of a point ahead of you.

Senator ERVIN. The Federal courts cannot determine whether or not the Attorney General will invoke equitable relief.

Mr. BROWNELL. He cannot determine whether the relief is given. The citizen is not affected until the court decisions come down.

Senator ERVIN. The court can't act in the matter until the Attorney General nods one way or the other yes or no, can he?

Mr. BROWNELL. That's a right that is protected by the Constitution too for the benefit of the citizens of the country in order to escape from some of the harshness of the old criminal laws. That's one of the greatest improvements we had in our judicial system which was the development of these equitable devices to soften the hardships of the old criminal law.

No lawyer can challenge the correctness of that statement.

Senator ERVIN. Suppose you answer the question. Read the question.

Senator HENNINGS. Will the reporter please read the last question.

(Question read.)

Senator ERVIN. You said the Federal court would make decisions on these matters but the fact is the Federal court will have no opportunity to make a decision in these matters under these amendments until the Attorney General either nods his head yes or no signifying whether or not he will bring the proceeding.

Mr. BROWNELL. As I say that is one of the rights of the citizens which is protected under the Constitution. The United States cannot start a case in this area unless the Department of Justice starts it. But the citizens' rights cannot be affected unless there is a decision of the court.

Senator ERVIN. Let me come back a third time to my question. I think you assumed that you answered my question. I believe you agree with me—we'll get back to a place of agreement—that under these amendments the Federal courts will never be given an opportunity to pass on any of these matters until after the Attorney General has

exercised his discretion and decided whether or not these remedies should be invoked.

Mr. BROWNELL. Well, of course, the private citizen can bring a suit but in the public action, a Government action, the Attorney General is the chief law officer and he starts the ball rolling but the rights of a citizen are not adjudged by him. They are adjudged by the Federal judiciary.

Senator ERVIN. I infer from your statement that I am correct in the statement that whether or not the provisions of parts 3 and 4 will ever come into operation insofar as bringing of suits is concerned, is dependent first of all upon the decision of one man, to wit, the temporary occupant of the Office of Attorney General of the United States. Now if I am incorrect and wrong in drawing that inference from your statement, I will be glad to know.

Mr. BROWNELL. The Attorney General authorizes the suit to be brought, that is correct.

Senator ERVIN. And if he doesn't authorize it it can't be brought.

Mr. BROWNELL. That does not strike down any State laws or regulations. It doesn't interfere with the constitutional rights of any citizens. It merely presents the case to the court for decision and everybody who is affected by the proposed action is given his day in court and the decision on those conflicting claims is made by the Federal judge and that may be appealed right straight up the line so that there will be uniform interpretation throughout the country.

Senator ERVIN. But until the Attorney General makes the initial decision the other 160 million people in the United States have no voice whatever in the matter.

Mr. BROWNELL. They have their rights, too.

Senator ERVIN. They have a voice but they are not required to be heard.

Mr. BROWNELL. They can start their own suits, Senator, under the existing law.

Senator ERVIN. Under existing law. I'm talking about the changes you advocate in the law. The power to put parts 3 and 4 of this bill in motion is confided by this bill to 1 man, namely, the temporary occupant of the Office of Attorney General to the exclusion of the other 160 million Americans; isn't it?

Mr. BROWNELL. That doesn't come about by reason of the passage of this program. That comes about by reason of the form of our Government. Under the constitutional laws of the United States the Attorney General takes an oath that he will enforce the laws of this country. That means that every time a Congress passes a statute that it is his obligation to see that this is carried out and the way that he does it is the way which you indicate.

He starts proceedings in the Federal courts.

Senator ERVIN. And he is the only one of the 160 million Americans who would have a legal right to start proceedings under this amendment.

Mr. BROWNELL. He acts under powers that were imposed upon him by Congress.

Senator ERVIN. I think you are begging for it. I am not seeking to impose it upon you as far as I am personally concerned. I see a couple of your associates shake their head "no." You can consult with them.

I can't require you to answer a question yes or no. But I submit that you could very well answer this question yes or no: That under these proposed amendments set forth in parts 3 and 4, the question of whether or not the powers conferred upon the Attorney General of the United States by those amendments shall be exercised are confided to the sole power of one individual, namely, the temporary occupant of the Office of Attorney General to the exclusion of every other human being in the United States; isn't that right?

Mr. BROWNELL. Well, the powers that are imposed upon the Attorney General by the statute, he would exercise them; yes.

Senator ERVIN. I will put the question in another way.

Mr. BROWNELL. The trouble with the kind of questions you are asking is that you made a statement first that by the nod of the head the Attorney General could take away rights from the States or take away rights from individuals.

Now you get down to this question. What I want to be sure is that the record is very clear that the Attorney General's only function here is the one which is given to him by Congress to start proceedings in this area. But that so far as decisions of the rights of the States or the individuals are concerned that is not his decision at all. He only presents the case, starts the case going, and the Federal judges as they do in every area of Federal jurisdiction are the ones that make the decisions that affect people's rights.

Senator ERVIN. I will ask my question in another form and maybe I can get a direct answer, not preceded by an explanation which excludes the answer.

Under this bill not a single one of any of the inhabitants of the United States of America could exercise any power to put parts 2 and 3 in motion according to the amendments except the one man who occupies the Office of Attorney General.

Mr. BROWNELL. Well, you see if this program passes—and I believe it is going to—then it amends the statute, it amends the statute and the parts of the statute that are already on the books are still a part of that statute.

They provide——

Senator ERVIN. I am very familiar with what they provide.

Mr. BROWNELL. I think I should have the same opportunity as you to express my opinion.

Senator ERVIN. Oh, yes.

Mr. BROWNELL. They provide that some of these actions can be brought by private individuals. That stays in the law. This is not a substitute for that. This is an addition to that. So that it would not be accurate to say under the statute as amended or proposed to be amended by this series of bills that the Attorney General would be the only one to take the action.

We are not taking away the right of the individual to start his own action. That still stays in the law.

Senator ERVIN. Mr. Attorney General, I will ask you this: Then under part 3 of S. 83, if it should be adopted and become law, can any human being other than the temporary occupant of the Office of Attorney General of the United States exert the power, the new power, created by subsection 4 which reads as follows:

Whenever any persons have engaged or are about to engage in any acts or practices which would give rise to a cause of action pursuant to paragraph first.

second, or third, the Attorney General may institute for the United States or in the name of the United States but for the benefit of the real party in interest a civil action or other proper proceeding for redress or preventive relief including application for a permanent or temporary injunction, restraining order, or other order.

That is the end of it.

My question to you is very simple. Of all of the 160 million people in the United States, would any person have any authority under this provision I have just read to you except that one individual who happened to occupy for the time being the Office of Attorney General of the United States?

Mr. BROWNELL. Yes.

Senator ERVIN. Who?

Mr. BROWNELL. Private individuals, based on the same set of facts. They could still bring their own actions.

Senator ERVIN. Are you telling me that a private individual could bring an action in the name of the United States and get this preventive relief?

Mr. BROWNELL. No.

Senator ERVIN. I didn't think so. I am just a little bit curious as to why you persist in talking about old remedies when you are asked about the proposed new remedies. I believe you have never gone to one of those old carnivals we used to have where a person stuck his head through a hole in a canvas and another fellow paid a nickel to throw three balls at him which he undertook to dodge.

Mr. BROWNELL. A part of that depends on the pitcher. If he throws the ball to the outfield it is a little hard for the catcher to catch it.

Senator ERVIN. We just had two people in the game at the carnival, the fellow who threw the ball and the fellow who stuck his head through the hole in the canvas, and who undertook to dodge the ball.

Mr. BROWNELL. In the other 47 States they have 9 men on the team.

Senator ERVIN. They have two men only in this game at the carnival. There is a hole in the canvas. The employee sticks his head through it and the customer pays for the privilege of throwing three balls at him. The customer used to pay a nickle. I guess now in the age of inflation it has been changed in that respect.

The customer could throw three balls at the employee and if he hit him he got a prize from the fellow who operated the concession. If I ever go into the carnival busines I will try to make arrangements with you, to stick your head through the canvas, and dodge the balls. I don't believe anybody could ever hit you.

Mr. BROWNELL. I would like to be there. Those fellows try to hit the target. They don't try to shoot off and hit a bogieman up here.

Senator ERVIN. But I am not shooting at any target.

Mr. BROWNELL. I believe that is right.

Senator ERVIN. I am just trying to find out what the fact is—whether there is any human being in the United States other than the temporary occupant of the Office of Attorney General who could set in motion the new remedy prescribed by this bill. I think at long last, after throwing many balls, we have decided that no one else has that power.

Mr. BROWNELL. If you are satisfied with the answers, I am.

Senator ERVIN. I want to see if that is your answer.

Mr. BROWNELL. The answers that I gave are just the same. That they still have private people who can act in this in their own——

Senator ERVIN. That's the answer to a question that I haven't put to you. That is my objection to it.

Mr. BROWNELL. It certainly throws light on the proper answer to your question.

Senator ERVIN. It also throws darkness on the right answer to the question I am putting to you.

Mr. BROWNELL. Under the laws amended if this program passes, private people will retain the right they have now to sue in their own name and the Attorney General will have the additional right which he does not now have to bring on behalf of the United States for the protection of its citizens the new remedy remedial actions.

Senator ERVIN. And he is the only human being that would have that new right?

Mr. BROWNELL. I don't want to change my answer. I think I have given you a complete answer rather than give a partial one.

Senator ERVIN. I do construe your answer to constitute an admission that the new right which would be created by the proposed amendments inserted in parts 3 and 4 of Senate bill 83 is a new right to be exercised by the Attorney General exclusively.

Mr. BROWNELL. I will stand on my answers and you can have your own interpretation of it. It is not my interpretation.

Senator ERVIN. Do you claim that any person other than the Attorney General could make the determination whether the new remedies should be invoked?

Mr. BROWNELL. Perhaps it would be helpful, Mr. Chairman, if the reporter read my last answer, because it would be the same this time.

Senator HENNINGS. Mr. Reporter, will you read the last answer?

Senator ERVIN. Read my previous question and see if the other was an answer to it.

Senator HENNINGS. Read the last answer please, of the Attorney General.

(Answer read.)

Senator ERVIN. I will accept the answer on the legal rule of construction that inclusion of one thing is the exclusion of another and therefore when you say the new right is to be exercised by the Attorney General I am going to take it that the inclusion of the Attorney General excludes the other 160 million people in the United States.

Mr. BROWNELL. That is your interpretation, I would like to have the record show and not mine.

Senator ERVIN. The committee will undertake to make its own interpretation in due course of course.

Read that last answer.

(Answer read.)

Senator ERVIN. Mr. Attorney General, I want to read to you part 3 of S. 83, which is substantially in the same words as subsection (c) of part 4:

Whenever any persons have engaged—

this is the amendment you ask us to incorporate in the law—

Whenever any persons have engaged or are about to engage in any acts or practices which would give rise to a cause of action pursuant to paragraphs first, second, or third, the Attorney General may institute for the United States

or in the name of the United States but for the benefit of the real party in interest a civil action or other proper proceedings for redress or preventive relief, including an application for a permanent or temporary injunction, restraining order or other order.

Now I have read you verbatim the proposed amendment embodied in part 3 of Senate bill 83. And I ask you what persons or what officials have a right to determine whether the Attorney General will avail himself of that new proposed remedy?

Mr. BROWNELL. The same answer would apply there, Senator, that the private persons retain their rights under the existing law which would be part of the amended law and the part that you have read there gives the United States Government action through the Attorney General an additional right to also start actions.

Senator ERVIN. The reason I ask you this question a second time is that I construed your answer a while ago to say that my conclusion that the power to determine whether the proposed new remedy should be invoked could be exercised only by the Attorney General was not your conclusion.

Mr. BROWNELL. The same answer goes as before, I will make my own statements, and then of course you have the privilege of interpreting them as you see fit.

Senator ERVIN. Will you read the Attorney General his statement about the new remedy because I want to ask a question restricted to it.

(Answer read.)

Senator ERVIN. My question was with reference to the second part of your answer.

Mr. BROWNELL. I beg your pardon?

Senator ERVIN. My question refers to the second part of your answer and to that part only. Do you intend to convey to me by that answer the information that in your opinion any person other than the Attorney General has any authority to determine whether the new remedy shall be put in motion?

Mr. BROWNELL. Same answer, Mr. Chairman.

Senator ERVIN. Your same answer is an answer that involves talking about private persons as well?

Mr. BROWNELL. Yes; I think that covers both questions in order to give a realistic picture of what the amended law will do.

Senator ERVIN. Now, Mr. Attorney General, we talked a little yesterday about the right of confrontation of witnesses, the right to cross-examine witnesses. I said that was a very basic right. Whenever you put the testimony of a man on a piece of paper, you can't tell whether the man has the veracity of a George Washington or the lack of veracity of an Ananias. I would like to ask you if you do not agree with me that rule 65 of the Federal Rules of Civil Procedure provides in express terms that a restraining order can be issued solely upon affidavits.

Mr. BROWNELL. Would you read the rule, please?

Senator ERVIN (reading):

No temporary restraining order shall be granted without notice to the adverse party unless it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and the hearing held on it.

Mr. BROWNELL. That seems clear to me; yes.

Senator ERVIN. In other words, the restraining order can be issued under rule 65, 65 (b) itself on an affidavit and a verified complaint or verified complaint, either.

Mr. BROWNELL. Yes; I give the same answer today as I did yesterday; yes.

Senator ERVIN. Then I will ask if you if there is any provision in the rule that requires anything other than that on a temporary injunction?

Mr. BROWNELL. Read the rule to me again with that in mind. I will try to interpret it, too, for you.

Senator ERVIN. To save time, it is a long rule and there is no use discussing all the provisions of it. I will say that I have read it. It is silent on that point. I have not been able to find any other rule or any statute anywhere—and there are a lot of statutes and a lot of rules—but I have tried to make a diligent effort to find them and I have not found a single one which requires anything other than affidavits or verified pleadings on a temporary injunction.

Mr. BROWNELL. As we said yesterday, the matter is in the discretion of the trial judge. These three election cases I cited this morning by name and number show that the trial judges do exercise that discretion and in some cases they hear witnesses and in others they do not.

Senator ERVIN. I think you and I are in agreement on that. I quote this from volume 43 Corpus Juris Secundum, 19, headnote:

> In the absence of a statute to the contrary and except on the hearing for a permanent injunction affidavits may be considered and when they establish sufficient grounds for a temporary injunction may justify its issuance. The court, however, may require or consider other evidence.

Mr. BROWNELL. That's a good statement.

Senator ERVIN. I think we both agree that is a correct statement of the rules.

Mr. BROWNELL. That's a good statement of it, yes.

Senator ERVIN. Yes; I think we can also agree on this statement from volume 43 Corpus Juris Secundum in section 193:

> When pleadings are properly verified they may serve the office both of pleadings and of evidence on the application for a temporary injunction.

I believe we can agree on that.

Mr. BROWNELL. Yes, that's a good restatement of what we said yesterday.

Senator ERVIN. I have asked you a great many questions about how this new proposed remedy will work. Is it your idea that the remedy would be speeded and take effect before the election? Isn't it?

Mr. BROWNELL. Yes, to prevent the crime from happening if possible.

Senator ERVIN. And would take effect before there was an opportunity in a great majority of cases to have a trial on the merits, wouldn't it?

Mr. BROWNELL. No, as we said yesterday, no.

Senator ERVIN. You tell me that a man can get a Federal case tried on the merits in something like 5 or 6 weeks?

Mr. BROWNELL. I have seen it done in much shorter time than that, Senator.

In emergency cases here in the District as you perhaps noticed in the papers once in a while they will even sit in the evening to see that justice is done.

Senator ERVIN. Well, of course, those are very exceptional, aren't they?

Mr. BROWNELL. Yes, in the ordinary case you would have plenty of time to present the evidence at length.

Senator ERVIN. Most Federal judges are pretty much overworked men.

Mr. BROWNELL. They are a very fine group of men and have consciences.

Senator ERVIN. They are so overworked in my State that the Department of Justice has recommended that we have another district judge.

Mr. BROWNELL. Good, I hope they will vote for that bill.

Senator ERVIN. As one who is familiar with the laws, delays as well as with the darts of outrageous fortune, I know it is not likely that the great majority of cases of this kind can possibly be tried on the merits before the election is held.

Mr. BROWNELL. Yes, one thing we mentioned yesterday, too, might be appropriately brought up at this point. We are covering the same ground again. Take that Louisiana example, it might be necessary under present law to have as many as 4,000 lawsuits whereas here we might avoid that congestion in the courts by a single injunction action and bring justice to the people involved.

Senator ERVIN. How much time does a man have as a matter of right in a suit in a Federal court to file an answer? In any case?

Mr. BROWNELL. In any case?

Senator ERVIN. In all cases?

Mr. BROWNELL. What we are talking about now is equitable relief where we may be having motion practice.

Senator ERVIN. I am not bothered about motions. Motions are not trial on the merits according to my understanding. Trial on the merits involves the right to present oral testimony.

Mr. BROWNELL. A large part of our legal system is based on it. It is as important as the other part.

Senator ERVIN. If you brought an action under this statute you could not try the case on the merits until the defendant had filed an answer, could you?

Mr. BROWNELL. Yes; many cases.

Senator ERVIN. You mean to tell me that equitable cases could be tried on the merits before an answer is filed?

Mr. BROWNELL. I can conceive that many of these cases would be started on motion and a full hearing, on the merits held without any complaint or answer, any answer in the normal sense being filed.

Senator ERVIN. You don't anticipate that these cases would be brought until the registration period opened insofar as the rights of voters are concerned, do you?

Mr. BROWNELL. I think they would be an all-year-round operation. We would try to detect the violations as promptly as we could so the courts would not be jammed at the last minute.

Senator ERVIN. In the average State the opportunity to register is afforded the voters only a few weeks before election, isn't that so?

Mr. BROWNELL. Yes, but you may get a situation—I don't know the laws of all the 48 States.

Senator ERVIN. A man couldn't be denied the right to register until he is entitled under the law to present himself for registration?

Mr. BROWNELL. Under the present law he doesn't have any adequate protection at all. Like take Louisiana situation which we discussed so much; I don't see any reason why if this program passes you couldn't start injunction proceedings right away to see to it that there wasn't a repetition of this crime.

Senator ERVIN. Are you going to disagree with me in the observation that you couldn't bring a case until a cause of action has arisen?

Mr. BROWNELL. Yes, but the cause of action may arise in these injunction proceedings long before the registration period based on past facts.

Senator ERVIN. You mean to say that you propose, if this bill is passed, that you propose to bring civil action to force election officials to register voters before the time comes in which the election officials can legally enroll those voters.

Mr. BROWNELL. No.

Senator ERVIN. That being true, you don't propose to bring a suit before the man is denied his right to register, do you?

Mr. BROWNELL. In some cases, yes. Where we have a course of conduct which indicates that the voter is going to be again deprived of his right to vote, which is guaranteed to him by the Constitution, we would be able to commence the injunction proceeding before the registration period.

Senator ERVIN. The Federal courts are judicial bodies, aren't they?

Mr. BROWNELL. That seems clear.

Senator ERVIN. And do you think that a judicial body has jurisdiction of a cause of action before the cause of action arises?

Mr. BROWNELL. No.

Senator ERVIN. Frankly I don't see how a man can be illegally denied his right to vote until he has made an application to register and has been denied registration. I do not see how the Federal Government can compel the States to change their laws so as to let the Federal courts by injunction regulate the times at which the books of registration could be open for the registration of voters.

Mr. BROWNELL. Aren't you confusing two things there—unintentionally, I'm sure? One is the time when the cause of action arises so the court can take preventive relief. The other is the time when the decision or the decree of the court should be carried out.

It may be that the decree of the court should be carried out only during the registration period but the decree itself could be formulated and handed down at an earlier date when the cause of action has arisen.

Senator ERVIN. I don't know whether I am quite as confused as you think I am. I have the thought that a court will not entertain an action to enforce a cause of action until the cause of action has arisen.

Mr. BROWNELL. I agree with that.

Senator ERVIN. I am glad you do. There is not as much confusion between us in my mind as I thought.

Mr. BROWNELL. No, I answered it three times and always the same way.

Senator ERVIN. That being true, since you cited the courthouse precinct down in Camden County, I ask you this: You wouldn't propose to bring a suit under this amendment down in Camden County against the registrar in the courthouse precinct for denying a man the right to register or vote until you first found out whether that registrar refused to let the man register and vote; would you?

Mr. BROWNELL. The way that would proceed is, if we had a complaint filed with us affecting that township we would have a preliminary inquiry made. If the facts involved showed there wasn't a violation of law or threatened violation of law we would drop it at that point. If the investigation showed there was a prima facie case, we would ordinarily try for voluntary compliance in these cases and try to make our program so well known throughout the country that in most cases there would be voluntary compliance just as there is in so many cases under the new bus decisions. We have the voluntary compliance program which comes first. But if you find—and this has no reference to any particular county—but if you find a situation where there seems to us to be a clear violation of law which the local officials were not attempting to remedy, then is when you would bring the action to enforce the civil rights of the citizens that are involved.

Senator ERVIN. What I am getting at is this: How are you going to determine whether a registrar, for example, is going to refuse a man the right to register until the time for registration arrives and that man presents himself to the registrar and asks to be registered and the registrar refuses to register him?

Mr. BROWNELL. As was the case here, the registrars were queried, and answers were received from them in which they admitted a discrimination between white voters and Negro voters which is unconstitutional—we had an admission of it—why, then they say they have been doing it for years, and it is quite obvious that they are intending to do it again, then I think you would be able to start an action, if there was no voluntary compliance before the registration period began for the following election.

Senator ERVIN. I can't forebear saying that your observation frightens me about this bill more than ever.

You are insinuating, if I understand the English language, that the Attorney General might be going around and investigating these conditions generally to see how the people will act before the time for action arrives.

Mr. BROWNELL. Oh, you will remember, I believe, the opening part of my answer said "on receipt of complaint."

Senator ERVIN. How are you going to receive a complaint that a registrar has refused to register anybody until that person has presented himself at a proper legal time to register and has been refused registration?

Mr. BROWNELL. If we have a complaint, as we have from citizens from Alabama, Tuskegee. Let me read this letter, which is dated October 26, 1956:

I am herewith sending you a photostatic copy of a list of names of more than 600 citizens of Macon County who are desirous of becoming registered voters. You are aware of the situation here in Macon County and the difficulty which we have experienced in getting citizens registered. You will note the enclosed photostatic memorandum is a petition to Governor Folsom and his two associates, who constitute the State appointing agency. We do not now have a State functioning board.

We have heard the situation is being investigated by the FBI at the present time. It seems, however, that the investigators are concerned about securing information pertaining to the elimination of names from the list of qualified electors. As far as I know, no names have been removed from the list of qualified electors. Our difficulty is we have not been able to add any to the list and have not been able to add any since January of this year. Your assistance is urgently requested.

In a case like that where we find people being deprived of their right to vote we would have an investigation, we would discuss the matter with the local officials, and perhaps in this case the State officials, to see if it could not be settled outside the court; but there, again, if we find that no voluntary action is instituted to remedy this injustice, this violation of constitutional rights which would appear to be involved, then it might be necessary to start an injunctive proceeding which I would think that shows a pattern over the years of violation of these rights could be brought before the actual registration date under the State law occurred.

Senator ERVIN. In other words, you think it is quite possible that the Attorney General of the United States would bring actions under these amendments if they are adopted to compel the registration of voters by a State official before the time for registration had arisen and before the State officials had actually refused to register those voters.

Mr. BROWNELL. No; that would be a misapplication of my words, I believe, because we would be enforcing the constitutional rights of these people and in a case like this we would not act unless a course of conduct is clearly shown which made it very evident to the court that the same deprivation of the rights to vote would occur another year unless something is done about it.

Senator ERVIN. In other words, you would base your opinion on what had happened in times past without giving yourself an opportunity to find out what the election officials were going to do in the future.

Mr. BROWNELL. You remember in my answer there would be such an investigation. We would ask them and consult with them and work with them, but, well, when you find a situation where the voting rolls are frozen for the purpose of maintaining a discrimination based on color and that has gone on year after year you have not only a shocking situation.

Senator HENNINGS. Does the Attorney General mean what we call in law sometimes a pattern or set course of conduct?

Mr. BROWNELL. That is correct, sir.

Senator ERVIN. In other words, because people have sinned in times past, you would proceed on the theory that they are going to sin in the future?

Mr. BROWNELL. If they said they were going to. They would be given an opportunity to say so.

Senator ERVIN. You wouldn't take their word if they said they were not going to?

Mr. BROWNELL. We have found by cooperation with State officials the matter can be ironed out.

Senator ERVIN. Coming down to these injunctive proceedings: Unless the parties can get a trial on the merits in a case where a person is denied the right to register to vote before the election, which I think from my experience in law would be the usual case, they

couldn't get the matter tried on the merits after the election if the man had been registered and voted under temporary injunctive relief; could they?

Mr. BROWNELL. We would hope to get the trial before election, because the purpose of bringing the equitable proceeding would be to prevent the crime from happening.

Senator ERVIN. We all hope for speedy justice, but, unfortunately, somebody has had occasion to bemoan its delays.

Mr. BROWNELL. We found that the Federal judges are most anxious to help in enforcing these constitutional rights and that they will give priority when necessary to this type of case to prevent the crime from happening.

Senator ERVIN. But, Mr. Attorney General, justice delayed is justice denied. We will agree on that. And justice hurried is often justice murdered. I agree with you that motions could be made and restraining orders could be issued and temporary injunctions could be granted on affidavits; but I don't think it would be humanly possible to get ready to try many of these cases on the merits before the election. That is my own personal opinion, and it is based on a lot of contacts with cases.

Mr. BROWNELL. We may not be able to remedy the situation 100 percent, but I think we could certainly get a good many of them tried.

Senator ERVIN. And I do not believe that you can force a man to a trial on the merits until his time for answering under the law has expired.

Now, assuming that my fears may prove correct and a case under this amendment is not tried on the merits prior to the election, and the party aggrieved has been registered and voted in the election under a restraining order or temporary injunction, won't the court refuse to try the case on the merits after the election on the ground that he has voted, and therefore the question of his eligibility to do so has become moot?

Mr. BROWNELL. There I think you are throwing the ball at the bogeyman instead of the target. The way that would be done would be, in most cases that I can foresee, on motion practice, and the court certainly would not act unless they were satisfied that they had the facts. Many of these cases could be tried in less than a day, I would say, from my experience in the trial-of-election cases in the State courts.

Senator ERVIN. Very many of these cases would involve the question whether the man was a resident of the precinct in which he desired to register. They might involve a question whether he can meet a literacy test. And they might involve the question of his prior conviction of crimes or his mental state as well as other matters, and certainly all of those matters on a trial on the merits could be gone into in oral testimony.

Mr. BROWNELL. That isn't the way it works. Remember the three cases that I cited here where the private individuals were seeking injunctive action. It was not necessary to go into those details; it was left to the local officials. They established an injunctive procedure which eliminated the system by which the voters in that area are deprived of the right to vote, and the court in the cited cases left it to the duly constituted local officials to apply that to the individual case.

Senator ERVIN. I am inclined to think that in a lot of cases there wouldn't be too much trouble for the Attorney General to get his way under this bill. I don't know how the system is generally, but in my State a registrar is usually a man of very limited financial resources. He gets paid about three or four or five dollars a day for a very few days. I think that if the Attorney General sets the legal machinery of the whole Nation in motion against him he would capitulate rather than to maintain his rights? That is what bothers me. I think a politically minded Attorney General could take these proposed amendments and intimidate election officials throughout the United States if he were so minded to do.

This has no reference to the present occupant of the office. As far as my observation of your conduct in the office of Attorney General goes, it has been characterized by reason. Since I must judge the future by the past, I wouldn't have quite that apprehension in your case. I have known in times past Attorney Generals that I have considered to be politically minded, and I think we might have them in the future. That is a fear I have.

Mr. BROWNELL. That gives me an opportunity to make a comment I meant to make yesterday. One of the class of persons that would benefit mostly by this legislation is the registrar, who as you say, is usually a fellow who is underpaid. In one of these cases it was the tragic case of a cripple who occupied that position, and it is really tragic to have to proceed against that man as a criminal.

After all, what he is doing is responding to a system which is there, and to perhaps pressure in the community, and it is not the way to tackle this job to go and sue him as a criminal. What we should be able to do is bring injunctive relief, point out the situation there. It is the system we are aiming at, not some poor little registrar—and get it cured that way.

I couldn't sympathize with you more on the job that these registrars have, but they will benefit along with other citizens if this program is passed.

Senator ERVIN. That is a danger as well as, from your standpoint, a blessing. I think the poor little fellows will submit—I mean there will be a great temptation for them to—rather than go off at their own expense to some distant Federal court to appear before judges. I think they will just throw up their hands and quit and surrender to the Federal Government the power to determine how the State election laws will be enforced.

Now, going to another subject, rather another phase of the same subject, it is possible that some State election officials will have the virtue that enemies call obstinacy and friends call firmness. They may not agree with the actions of the Attorney General in a suit. We had a man down in my State that did not agree with anybody about anything. He found that cabbage didn't agree with him, and thereafter he wouldn't eat anything but cabbage.

You might get election officials like that. There are some election officials who will stand up when they believe they are right. So they stand up in this suppositious case. They disobey in good faith the restraining order or the temporary injunction. They refuse to register the party alleged to be aggrieved.

When one of these State election officials is brought up for contempt in the Federal court he can't attack the propriety of the order

which was directed to him even though he may believe that he was absolutely justified by the facts in his action. His good faith doesn't constitute a defense; does it?

Mr. BROWNELL. The question of intent would be involved there.

Senator ERVIN. The question of intent would be involved on the question of punishment, but not on the question of his liability to punishment.

Mr. BROWNELL. He could not at that point challenge the finality of the court order.

Senator ERVIN. He could not challenge the finality of the court order and, unless he has an extremely patient judge, he could not show that his action was justified.

Mr. BROWNELL. I think he would have full opportunity to do that.

Senator ERVIN. I am not so certain. When you bring a man up on a contempt proceeding, the judge is not only in a sense the judge but he is also in a way the party aggrieved because his order has been disobeyed. I think most judges would be reasonable. Some of them may not. But as a matter of fact his good faith and his belief that he was justified by the facts in his action would be no defense, would it?

Mr. BROWNELL. I think it would be something that the court would take into consideration.

Senator ERVIN. It would be a mitigation of punishment.

Mr. BROWNELL. It wouldn't be conclusive but it would be one element in the judge's decision as to whether or not he had with intent to do so violated the order of the court.

Senator ERVIN. I believe, I copied this from a Federal case but unfortunatedly I did not note the citation. It was held an injunction cannot be collaterally attacked in contempt procedings and unless the injunction is voided, its propriety must be tested by appeal and not by disobedience. I believe that is a correct statement.

Mr. BROWNELL. Yes; but that is not inconsistent with the point I made before.

Senator ERVIN. The belief, motive, or intent of defendant is no defense in contempt proceedings for violation of an injunction. Although they may mitigate punishment.

Mr. BROWNELL. That's right.

Senator ERVIN. This Federal statute that you seek to amend so as to confer on the Attorney General the power to invoke injunctive relief in the fourth part of this act is a criminal statute as I construe it, I believe that is right.

Mr. BROWNELL. You mean the way it stands now.

Senator ERVIN. The statute about the right to vote.

Mr. BROWNELL. Which section is that?

Senator ERVIN. Well, there is a Federal statute—I won't take the time to look at the particular section—there is a Federal statute which makes it a crime for any person acting under the color of a State law to deny a qualified citizen the right to register and vote, makes it a crime.

Mr. BROWNELL. If it is done, if the discrimination is on the basis of color, and so forth.

Senator ERVIN. That is what I mean. I should have said that to make it clear.

Moreover, the amendment gives the Attorney General the right to invoke equitable relief in a situation of that kind, does it not?

Mr. BROWNELL. Yes.

Senator ERVIN. Now if the Attorney General invoked equitable relief in a case of that kind, he would be invoking equitable relief against an act or a threatened act which would constitute a crime under the Federal law.

Mr. BROWNELL. That's right.

Senator ERVIN. I want to put in the record some of the Federal statutes about contempt. The general statute is embodied in title 18, section 401, and reads as follows:

A court of the United States shall have power to punish by fine or imprisonment at its discretion. Such contempt of its authority and none other as (1) misbehaviour of any person in its presence or so near thereto as to obstruct the administration of justice; (2) misbehaviour of any of its officers in their official transactions; (3) disobedience or resistance to its lawful writ, process, order, rule, decree or command.

That is a statute which I understand covers what we lawyers call civil contempt and where the court imposes punishment not for the purpose of punishment but for the purpose of compelling obedience to some decree entered in a civil action.

There is another statute which is embodied in the succeeding section, section 402 of title 18 of the United States Code reading as follows:

Any person, corporation, or association which willfully disobeys any lawful writ, process, order, rule, decree, or command of any district court of the United States or any court of the District of Columbia, by doing any act or thing therein or thereby forbidden if the act or thing so done be of such character as to constitute also a criminal offense on any statute of the United States or under the laws of any State in which the act was committed, shall be prosecuted for such contempt as provided in section 3691 of this title and shall be punished by fine or imprisonment or both.

Such fine shall be paid to the United States or to the complainant or other party injured by the Act constituting the contempt or many where more than one is so damaged be divided or apportioned among them as the court may direct but in no case shall the fine to be paid to the United States exceed in case the accused is a natural person the sum of $1,000 nor shall such imprisonment exceed the term of six months. This section—

and I invite your particular attention to this—

shall not be construed to relate to contempts committed in the presence of the court or so near thereto as to obstruct the administration of justice nor to contempts committed in disobedience of any lawful writ, process, order, rule, decree, or command entered in any suit or action brought or prosecuted in the name or on behalf of the United States, but the same and all other cases of contempt not specifically embraced in this case may be punished in conformity to the prevailing uses at law.

Now there are two other statutes. Section 3696 of title 18 of the United States Code reads as follows:

Whenever a contempt charge shall consist in willful disobedience of any lawful writ, process, order, rule, decree, or command of any district court of the United States by doing or omitting any act or thing in violation thereof and the act or thing done or omitted also constitutes a criminal offense under any act of Congress or under the laws of any State in which it was done or omitted, the accused upon demand therefor shall be entitled to trial by a jury which shall conform as near as may be to the practice in other criminal cases. This section shall not apply to contempts committed in the presence of the court or so near thereto as to obstruct the administration of justice nor to contempts committed in disobedience of any lawful writ, process, order, rule,

decree, or command entered in any suit or action brought or prosecuted in the name of or on behalf of the United States.

Senator HENNINGS. Would the distinguished Senator from North Carolina suspend for just a moment? I think we are all aware that the Attorney General has come here for the second day and that we did ask permission for this committee to convene yesterday afternoon, which failed because of there being an objection, the unanimous-consent rule applies.

Again I want to say to my colleague that it is not my desire nor indeed my right to inhibit nor to undertake to in any wise impede nor shorten his examination of the Attorney General. But I just wondered, since we are past the noon recess period customarily taken and Senators do have a few other things awaiting us in their offices and some of us do have other engagements during the noon hour, I wonder if the Senator would be good enough to give us some estimate of about how much longer he might require in his examination of the Attorney General and also ask the Attorney General and his staff what his and their engagements are so that we can try to work something out for the convenience and to suit the other commitments and obligations of all who are concerned in this matter.

Again I repeat I don't think it would be right for me to even undertake if I could, which I doubt very much that I could in any wise shorten the examination of the Senator who has every right to inquire as fully and as freely as he desires.

But I would like some expression from the Senator from North Carolina so perhaps he and the Attorney General can come to some meeting of the minds.

I have to be here, anyway, so it is not for the purpose of suiting my convenience. I am glad to be here. It is my duty, sir.

Senator ERVIN. I wish I could give you some definite answer as to the time. I still have a good many questions to ask. I was going to ask this. I would like to be relieved by Mr. Young on the part about the Commission and the section about the additional Attorney General; to let him ask questions instead of me. But I still have several questions and I think that the biggest false prophets in the world are lawyers who attempt to say how long they will question a witness.

Senator HENNINGS. The Chair is only trying to work this out in a manner that is convenient. I assume the Attorney General has some commitments for the rest of the day?

Mr. BROWNELL. It would be a great accommodation for me, Mr. Chairman, if we could recess now and I would come back next week any time.

Senator HENNINGS. We have several witnesses here and we have proceeded some time past the usual recess hour.

Senator ERVIN. Mr. Chairman, I wish I could give you a definite answer as to the time.

Senator HENNINGS. I am not pressing the Senator to give a definite time. I am just trying to give us all some notion of what we can do and what we should do in order to do it competently. There are other Senators waiting here. I see the Senator from Mississippi, Senator Stennis, who has been here 2 days.

Senator STENNIS. I am at the pleasure of the committee.

Senator HENNINGS. We apppreciate your being here. Senator Ives from New York has been here both days. There have been some other

Senators here and we have a list of witnesses, I might say, Senator Stennis according to the list handed me by the committee staff is to be our next witness and Senator Ives, then the Honorable Charles C. Diggs, who is United States Representative from Michigan and Senators Douglas and so on.

Senator Dirksen has suggested night meetings. We had planned on night meetings probably starting some time next week depending upon how we get along. We will be compelled to meet all day and I think rather late into the night should the examination require it.

Senator ERVIN. I will have to invoke in that case another constitutional provision which prohibits cruel and unusual punishments.

Senator HENNINGS. I want to make it very clear that I am not trying to inhibit——

Mr. BROWNELL. That goes for Cabinet officers too.

Senator HENNINGS (continuing). The Senator's examination.

Senator ERVIN. Mr. Chairman, I have a good many questions and as I say I would like Mr. Young to relieve me on the other two phases of this bill. I don't have too many on this phase. But my experience is that if there is any class of false prophets whose prophecies cannot be relied on at all it is those people who have had legal training when they assure you how much time they will take.

Senator HENNINGS. I asked for an approximation of the Senator's plans. I have been engaged in the cross examination and examination of witnesses over the course of a good many years. I was hoping we might get together in some way or another to accommodate the convenience of those who have other commitments.

Senator ERVIN. I will add to that class of false prophets those of equal stature, Senators when they say how long it will take them to do a thing.

Mr. BROWNELL. Mr. Chairman, it might be helpful to you for me to say this. I am so anxious to see prompt action taken on this program that I will be available Saturday, Sunday, or evening sessions or any time next week.

I would appreciate being excused now because I had to change my whole calendar for today. With the exception of this afternoon I can come any time.

Senator HENNINGS. I know that you did.

It is now almost 10 minutes before 1. What is your suggestion?

Mr. BROWNELL. I couldn't do it myself this afternoon.

Senator HENNINGS. The Chair wants to accommodate all of you and be as fair and reasonable as I know how to be in this matter but I do realize that you men have made other firm commitments which can't be canceled or otherwise disposed of.

Senator ERVIN. I was going to say in this connection, Mr. Chairman, that some governors and attorneys general and eminent lawyers have contacted me for permission to testify and I don't know when to tell them to come. Next week we have a bad situation in that the Middle East resolution is going to be on the floor of the Senate and it is a crucial thing. I have been on the committee that is considering it and I feel to a large extent I have to be on the floor there as much as possible.

Senator HENNINGS. The Senator is quite right there is nothing more important before the Senate than that. However, the Committee on the Judiciary does meet on Monday morning, which will

preclude there being a meeting of the subcommittee, there being seven on this committee who are hoping to be there at our next meeting.

And thereafter Tuesday morning, well, Wednesday morning, Thursday morning, and perhaps we will have to go on to some night meetings.

I would like, however, to respect the wishes of the other members of this subcommittee in calling an executive session to determine when and whether we are going to start meeting in the evenings. I have already said that I would like to call those meetings and propose to call them during the evenings so that we can move along and give everybody an opportunity to be heard and be heard full length and to be examined indeed at full length.

Mr. BROWNELL. May I be excused?

Senator HENNINGS. So these matters as the Attorney General and you gentlemen realize will have to be worked out.

What time—the Attorney General cannot be here this afternoon.

Mr. BROWNELL. Any other time.

Senator HENNINGS. Could the Attorney General be here tomorrow morning?

Mr. BROWNELL. Yes.

Senator HENNINGS. Senator Ervin, would that be agreeable to you? The Attorney General can be here tomorrow morning, Saturday morning.

Senator ERVIN. Mr. Chairman?

Senator HENNINGS. Is that convenient to you?

Senator ERVIN. I can make it convenient to me. I came here on the 1st of January. With the exception of a couple of days last week when I went down to my State, I have been attending committee meeting on the Mideast resolution ever since. I have been compelled to spend large portions of the night, trying to study these bills. They have 113 pages and scores of different provisions. As I say, I have had to stay on committees all day and have had to sit up late at night to studythese bills. I can't even find time to dictate letters to my constituents. However, I can come here tomorrow if it is more convenient to the Attorney General. But I personally would rather that the hearings go over till next week.

Senator HENNINGS. I personally am on 16 committees and subcommittees as to that and chairman of three of them myself and I am very well aware of the Senator's problem.

Senator ERVIN. I would rather it go over.

Senator HENNINGS. Tomorrow morning could Senator Stennis be here? Could you be here this afternoon?

Senator STENNIS. Yes.

Senator HENNINGS. 2:30?

Senator STENNIS. That will be all right with me.

Senator HENNINGS. Would that be convenient with you?

Senator STENNIS. Yes.

Senator HENNINGS. Thereafter Senator Ives, assuming that time allows for his testimony and such others as may be on the list.

I want to make it clear I did not arrange the order of witnesses. They were arranged by the staff according to the time of application.

(Whereupon, at 12:50 a recess was taken, to reconvene at 2:30 p. m. of the same day.)

AFTERNOON SESSION

Present: Senators Hennings (chairman of the subcommittee) Ervin, Dirksen, and Hruska. Also present: Charles H. Slayman, Jr., chief counsel, Constitutional Rights Subcommittee; and Robert Young, staff member, Committee on the Judiciary.

Senator HENNINGS. May the subcommittee please come to order.

At the outset I have a letter from the Senior Senator from New York, Senator Ives, addresed to the chairman of this committee.

The Senator writes as follows:

Enclosed is a statement which I should like to submit to your subcommittee on Constitutional Rights. I intended to present its substance in a statement before your subcommittee, but noting that you are running into presentations which may slow down your subcommittee activities, I desire to save your time by asking you kindly to incorporate it in your hearings' record. This favor will be greatly appreciated.

With very best regards, I remain

Sincerely yours,

IRVING M. IVES.

Senator HENNINGS. So without objection Senator Ives' statement will be made a part of the record of these proceedings.

(The statement submitted by Senator Ives is as follows:)

STATEMENT BY SENATOR IRVING M. IVES CONCERNING CIVIL RIGHTS

I appreciate the privilege of submitting to the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary this statement in behalf of legislation which would strengthen the Federal Government's authority to guarantee to every American citizen the full exercise of his civil rights. I congratulate the subcommittee on scheduling hearings so promptly on the various civil-rights bills which have been introduced in the Senate this year. I see good reason for hope that at least a modest civil-rights program—such as that recommended to the Congress by the President—will be reported to the Senate soon and passed by the Senate this year.

We profess to live in a democracy, and we try mightily to show other nations that the United States is a democratic society. Relatively speaking, that is true. Certainly the individual citizen is far less likely to be subjected to discrimination because of his race, creed, color, national origin, or ancestry here than in many other nations. But we fall very short when measured against perfection—and in the field of civil rights I define perfection as the attainment of the standard set forth in the Declaration of Independence: That "all men are created equal, that they are endowed by their Creator with certain unalienable rights."

Unalienable rights? Do we not alienate the rights of the citizen who is, in one way or another, prevented from voting because of his color? Do we not alienate the rights of the citizen who is denied employment or given inferior employment for no reason other than his race or religion? And what of the citizen who is subjected to verbal or physical abuse because of his race, creed, color, or national origin? Or the citizen who is humiliated in public transportation because of his color?

We cannot honestly call ourselves a democratic society as long as these discriminations exist. Neither can we hope to set a convincing example of democracy to other nations as long as we compromise democratic standards.

Much has been done in recent years to advance the cause of civil rights of our citizens. The Eisenhower administration has brought about a considerable improvement through Executive action. The Supreme Court and other Federal courts have improved the civil rights situation by clarifying the scope of the 14th amendment.

But there remains a great need for stronger laws affecting civil rights. That need can be met only by the Congress.

I am hopeful that the Senate is at last in a position to adopt meaningful civil-rights legislation. At the very least, that should involve approval of the mild civil-rights program proposed by President Eisenhower and embodied in the bill introduced by Senator Dirksen with other Senators, including myself.

Still more adequate would be the program embodied in the series of bills introduced by Senator Humphrey and others, again including myself. Most of this program is contained in S. 510.

As a people who boast of being Christian, and as a Nation dedicated to democracy, we must recognize and uphold civil rights. I contend that civil rights can be made effective, and a reality in this country, only by action of the Congress. I urge this subcommittee to approve a bill, or bills, which will produce that result.

Senator HENNINGS. We are now privileged to hear from the distinguished senior Senator from the State of Mississippi, Senator Stennis.

Senator, of course you may proceed in any manner that you see fit, either by reading from your statement or interspersing from your prepared statement.

STATEMENT OF HON. JOHN C. STENNIS, UNITED STATES SENATOR FROM THE STATE OF MISSISSIPPI

Senator STENNIS. Mr. Chairman and members of the committee, my remarks will not be extensive, and are written only in part.

I want to thank the subcommittee for the chance to appear here, gentlemen. I am not here to condemn anyone that sees this problem from the other viewpoint or the other side. I cannot help solve this problem nor help my people who are going to be affected by this legislation unless I can convince my colleagues here in the Congress that this legislation is unwise and unsound, and will not solve the problem that the authors of this resolution are trying to reach.

It strikes me, gentlemen, it impresses me greatly—and I know the Attorney General and the men who are authors of these bills are men of very high purposes and good intentions, men of very high motives, men of judgment. But it strikes me that the men who are asking for this legislation, the Attorney General plus all the authors of it, are all men that have never really lived with this problem, have never contacted it nor studied it at the level where it exists, have never been to the South, that is the area this legislation is directed at, and stayed there long enough to get the feel of this problem and get the real viewpoint of the people that live there, the colored people and the white people.

I wish you had. I think your viewpoint would be somewhat different. It strikes me further that it is my children and not the children of you gentlemen that are going to live with this legislation and will live with what it creates; they are going to live there with the problem, if this legislation does pass—my children, not yours.

So I have something at stake here too. I tell you the 15 or 16 million white people of this great area of the Nation have something at stake here along with the 10 or 12 million colored people.

I have just come from 4 weeks of hearings on the so-called Middle East question. All views were represented there, and the whole idea was to try to help those people over in that area and try to help keep the peace of the world.

Many proposals we discussed, but not a single person ever suggested that we should try to make one people out of the Jews and the Arabs.

The displaced persons there and the differences between the Jews and the Arabs is one of the great problems, as you know, and no one ever suggested that we try to amalgamate them and make one pattern of conduct for both groups.

I came here directly from the room where that bill was finally agreed on. I walked directly to this room and I find a set of bills here that strike at the foundations of the social order of nearly all the people in the great Midsouth. We are just running by some danger signs, I think, gentlemen, without giving history and human nature the proper consideration.

We are never going to build nor continue a public-school system in the South by injunctions sought by the Attorney General of the United States and his special assistant. It won't work that way. There must be other foundations for a school system and a social order. We can never conduct public affairs there through coercion and intimidation of our local boards, commissioners, and trustees of schools and county boards of supervisors and city and town boards of aldermen. That is the practical effect of this legislation. That is the practical operation of it.

I shall not make a legal discussion. I would like, Mr. Chairman, to reserve the right to present orally or in writing a legal discussion of some of these major legal points later, but I am trying today——

Senator HENNINGS. Without objection I am sure that the Senator will be accorded that privilege.

Senator STENNIS. Thank you.

Today I shall try to take you gentlemen with me into the field and the practical operation of this bill should it become law.

The Attorney General is an outstanding officer. I believe I know something of the way he feels about this legislation.

Twenty years ago this month, if you will permit a brief personal reference, gentlemen, I resigned as district attorney in Mississippi, and the district attorney there is the chief and sole prosecuting officer of the district. He is not subject to the State attorney general or anyone else. He is a constitutional officer. The sole power to prosecute rests in him.

I had served for 5 years, and I felt daily an urge for more power. I wanted power to prefer what was in effect indictments myself, file them with the court and proceed with the prosecution, without having to go through a grand jury. I had a certain respect for it as an institution, but I thought it was impractical, outworn, and outmoded. and that I should be given the power.

Now I am 20 years older. I have had 20 more years of public service, 11 years as a circuit judge and 9 years in the United States Senate. I am grateful that this power was not given to me.

I am grateful that the power to indict is still in the hands of the grand juries. I am pleased and grateful that this power was never given to me nor my successors but remains with the jurors. Too, I am thankful that we still have the greatest civil right of them all, a right to trial by jury. I say this after these 16 years I spent in the courtroom dealing with the daily problems of the people of both races.

I have had to pass sentence on many of them. I have had to sentence men to die. I have sent them to the penitentiary, many hundreds of them of all groups and all ages.

I do not intend to make personal references to myself. I am telling you that I know something about this problem. Over those years people of all groups came to my office seeking information and advice. I know people and their problems in this area.

I know the problems of the average little fellow, whatever his color, and I do not beleive that you could do the relations of these people more harm, more harm, gentlemen, than to pass bills of this kind and send the Attorney General of the United States, through his assistants, into our area of the country with powers provided here to operate a major part of our public affairs with Federal Court injunctions.

Now for a discussion of the Attorney General's bill. It includes a provision creating a commission as requested by the Attorney General to make a study of the needs of the Nation as to the enforcement of civil rights.

Specifically, the Attorney General said, as I understood his testimony, that there was needed "a greater knowledge of the problem through a full-scale study."

That is the way I recall his testimony.

Then, this bill, without waiting for the results of this study which he feels is necessary, and as a part of the same bill that creates the commission, he requests some of the most far-reaching legislation that has ever been proposed on this general subject.

This legislation, S. 83, contemplates special Federal attorneys under a new Assistant Attorney General to be sent out by the Department of Justice to prosecute civil rights cases, including civil cases in the Federal courts.

In actual practice, this will mean that litigants to bring the suits would be rounded up by agitators and outside groups, and encouraged to enter into litigation concerning the alleged violation of some civil rights as defined either by the courts or by the statute law.

Now I am not talking through my hat on that. As I have the facts, even the celebrated Lucy case, the unfortunate celebrated Lucy case at the great University of Alabama, it turned out later that as stated by her husband, as I understood it, that she was then being paid a monthly salary by the NAACP during the time the case was in litigation.

But apart from that, I know the effect of outside agitators that are going to stir these matters up. All that would be required now for any person to start such a suit would be to file an affidavit, written probably by some lawyer he has never seen, that he had been denied a civil right.

Although he might be a person well able to do so, he would not have to put up as much as one dollar in cash or by bond for court cost or for possible injury to the other party, or to pay his own attorney or any of the other costs attendant to lawsuits.

All such costs and attorney fees would be paid by the Federal Government.

Without the usual preliminary requirements and safeguards, this litigant could set in motion the most powerful legal weapon known to the law: The injunctive process of a Federal court.

He would not have to exhaust his lawful remedies through boards and agencies of Federal or State governments nor the State courts, as is required by the ordinary citizen, but would have this free and open entry to the Federal court.

This is not an exaggeration, gentlemen.

Some attorney, representing the Department of Justice at Washington, could thus go before a Federal judge and get a temporary injunc-

tion on this affidavit, or on testimony, without the defendant having a chance to be heard.

This temporary injunction would hail the defendant into court at some future date, but would immediately stop the machinery of local government, as, for instance, if the defendant were a school trustee or an election commissioner.

This plaintiff would not only gain this advantage; he would throw the community into an uproar, setting neighbor against neighbor and friend against friend.

That is one of the most critical things about this entire picture, gentlemen. One of the finest services a local lawyer ever does is to decide when not to bring a lawsuit or when to bring it. That is one of the greatest services that members of the local bar render to their community and to their country I think, is exercising a sound judgment as to when to bring a lawsuit and when not to bring it. The community suffers when outside lawyers decide to file such suits.

This does not attribute the lack of judgment to the present Attorney General or any of his assistants. But we do not know who will be the next Attorney General nor the next nor the next. But even with this one now and his special assistants, when they go out under this law on a mission of this kind, when they get back, whether the Attorney General asks them or not, someone in authority will say: "How many did you get?"

They are going out for game. They are going to want to bring back a favorable score.

Thus is thrown on this defendant, a local official, usually a man with a sense of civic responsibility but of small financial means, the burden of opposing the Department of Justice, including the FBI, and this special Federal attorney, as well as any pressure and adverse publicity that outside groups care to muster against him.

Let me stop on that point.

Let's not argue any more that this law does not create a new cause of action. Whatever the technical situation may be as to the thin line of departure between the present statute and this one so far as an equity cause of action is concerned, when you put the Department of Justice, and the FBI, and these special attorneys, and the pressure of the Federal Government, and the Federal Treasury against these minor local officials, you are creating a new cause of action. Moreover, you deny them the most fundamental of all our civil rights—the right to be judged by their peers—the right of a trial by jury.

That is the practical side of this situation.

Senator ERVIN. I thought I would ask you a question which I think is apropos of what you are discussing.

The Attorney General stated this morning that he would get a speedy hearing. Before the Attorney General would start a suit under this act, he would have an extensive investigation conducted by the FBI, and he would be apprised of all the facts that he would desire to present in the case. But the defendant would not have knowledge of the fact that he was to be sued until the suit was actually brought against him.

Then after that suit was brought against him, he would have to retain the services of some private attorney.

Senator STENNIS. That is right.

Senator ERVIN. And after he retained the services of that private attorney, that private attorney, as we practice law in the South, would have to interview witnesses and try to find out what the facts are in the case before he could possibly prepare the case for trial or prepare a defense.

Does the Senator think, from his experience as a practicing attorney, that it would be possible for any attorney representing a defendant in an election suit under these circumstances to get his case ready for trial in any satisfactory manner in 1, or 2, or 3, or 4, or 5 weeks?

Senator STENNIS. Well, it would certainly require time. It depends on the particular case, but a competent attorney has other things to do, also. As members of this subcommittee well know, he cannot just turn loose and give all of his time to one case. It takes time to properly prepare an important case.

Senator ERVIN. And he has other matters to attend to while the attorney who works for the Government and who is supported entirely by the taxpayers does not have anything in the world to do except to do what he is assigned to for the Government.

Senator STENNIS. I thank the Senator. I want to get back now, gentlemen of the subcommittee, to this situation we were discussing. We are proceeding against this little man in this local community, this civic-minded person that took an assignment on some kind of an election board, or a school board.

This crushing load must be carried even though he has never been so much as indicted and has never been charged with a violation of a criminal statute.

Actually, confronted with this most serious situation, he thinks that he at least has what he has always understood was a civil right written in the face of every constitution in the land, that is, the right of a trial by jury.

But his lawyer, after he has employed one, is compelled to advise him that ordinarily he would have this right to a trial by jury, but that this right, in effect, is taken away from him under this proceeding.

Now that is the practical situation that he is up against, gentlemen. I seriously object to the presentation made here by the Attorney General to the effect that after all, this bill is just a mild remedy that he is asking for, not nearly as severe as an existing criminal statute on the subject.

Why, gentlemen, this remedy by injunction is the most severe remedy known in the law. This bill permits a complainant to proceed without the usual safeguard of a bond for costs, and for damages, and robs the accused of a jury trial.

It is one of the most severe and drastic and far-reaching remedies that has ever been permitted to come into our system of law.

I would like the Senator from North Carolina to hear my next point. I refer to this new power that is being lodged in the Attorney General. I say that this is in effect a new cause of action. It is no explanation to say that this power is already found in the antitrust laws.

Who are the defendants in the antitrust suits, gentlemen?

They are corporations worth billions of dollars or hundreds of millions of dollars, with the finest legal talents and all other talents that this Nation can afford at their beck and call.

Where is the analogy then for saying we already have this principle written into our laws?

Let us continue with our illustration.

Whatever I say about the Federal judge, I have no condemnation of any Federal court nor Federal judge. But I do know this, gentlemen, by personal experience. Power grows on a man. I had a lot of judicial power, was honored with it for 11 years. With all deference to all Federal judges, I think it is pretty generally known that quite a few of them have little patience with State laws.

I have found that, with all deference to all of them, the longer they serve, the less patience they have with State law. That is human nature, I suppose.

I think the judiciary is the most important branch of the Government. Throughout most of our history it has been the most honored branch. I want to put it on an even higher pedestal, as high as its members will let it go. It cannot get any higher though than are the individuals who occupy the bench. I heard the other day that some Federal judge said that he was going to throw out the window the new Virginia school law and that the remark was made before the case was tried. This is hearsay with me. But I have read in recent communications through the press from Norfolk that Judge Walter E. Hoffman had talked rather caustically about the legislature of Virginia and the State political leadership.

One thing he said:

> But the legislature has made whipping boys of the superintendent and the school board.

Now I feel that he could well be reminded that Virginia had a general assembly and a governor before this Nation had Federal judges, and whatever he might think of their judgment on any subject, they are a very honorable organ of our system of government.

That is my point.

Senator HENNINGS. At that point may I ask the Senator one question?

Senator STENNIS. Yes.

Senator HENNINGS. Would the Senator think, if such legislation were to be enacted, that it would be better to provide by way of penal clause criminal sanctions against certain of these acts which may be complained of, that is, the depriving of any citizen of his right to vote?

Senator STENNIS. I think it would certainly be sounder than this so-called equity proceeding, yes, sir; I certainly do.

Senator HENNINGS. There are some bills which so provide.

Senator STENNIS. Yes; I do not think there is any doubt about it as a practical matter.

But I still say that the way to build these institutions is not by criminal prosecutions nor injunctions nor approaching the entire problem in that way.

But it would certainly be better to have penal statutes than it would these proceedings that could be so iniquitous.

Now I do not think it is a matter of trusting the Attorney General or whoever happens to be the Attorney General.

We don't know what type man we shall have in years to come. There is tremendous political pressure behind this movement. When

he prepared these bills, as the chief in the Department of Justice of the Government, he might have been responding in part to the political pressure following political promises that were made at a national convention at San Francisco.

I know there is political pressure behind these bills, and there will be political pressure behind the enforcement of any law that is passed on the subject matter.

The Attorney General, with commendable frankness, says the legislation will apply in enforcing the school integration decision. Thus, we have a direct answer to the question of how the Supreme Court expects to implement a decision that it has announced, but which it cannot enforce except through methods that will destroy the schools.

I think, gentlemen, it is a sad day for any nation and the children of that nation, of whatever color, when the public schools are handled by courts and politicians in such a fashion that they have to be operated through injunctions and criminal statutes.

A public educational system should be grounded on the needs and the feelings of the people, rather than on the modern trend for basing it on criminal statutes and injunctive processes.

I don't believe that statement can be contradicted, gentlemen. The strength and the influence of a school is its soul and spirit, and that comes from the people back home, the people that are sending their children there, and any enforced formula or pattern through court action or criminal statute or anything else will not do the work.

Many county boards of supervisors or county commissioners and town and city boards of aldermen exercise functions that pertain to the civil rights of citizens. These boards constitute the basic hard core of local government. They, along with the school boards and election officials, will all be brought under the operation of this statute and of the personal surveillance of whatever individuals are chosen to administer the law.

These individuals will vary in character and in motives, but the power entrusted there will remain.

In addition to all the foregoing, this proposed law clothes all these officials with complete power to bypass the State courts and State and Federal administrative bodies.

Now that is one of the most far-reaching provisions in this entire statute, is a complete bypassing of all State courts, State and Federal administrative bodies.

I think we make a serious mistake when we set up groups that way and make a special rule for them and bypass all of these customary and usual and ordinary functions.

All of the foregoing facts add up to one thing: A coercion and an intimidation of virtually all local officials, elective and appointive.

This all adds up more and more to the Government being further and further and further removed from the people.

I want to refer especially to one particular legal point. It comes under section 212, in which this is very clearly added.

The district courts would be authorized to proceed in equity without regard to whether lawful and administrative remedies either State or Federal have been exhausted or even attempted.

It is this last provision which would change the whole nature of the equity jurisdiction of the United States courts. It is a sweeping

change in constitutional law, and would change the nature of equitable relief which has been granted and fixed since the year 1066.

The underlying legal theory of equity jurisdiction is that there is no adequate remedy at law. Those on this committee who are lawyers and particularly the chairman, I know, I think I have heard him express himself on this in other arguments on the floor of the Senate.

The whole underlying basic theory of injunctive process and equity proceeding is that there was no adequate remedy at law. You gentlemen naturally remember the story of how this court originated.

If the regular courts in England did not offer a remedy, the King, through the practice as I recall of referring such matter to his secretary, set up this special court, and these extraordinary remedies were vested in this special court with special powers, including injunctions.

Gentlemen, in a broad, sweeping way, we entirely reverse that whole process in these bills, and put the equity machinery first including these extraordinary remedies. One of the basic principles as I say of our whole legal system is that equity intervenes only when there is no adequate remedy at law.

Let me conclude with this thought—a statement that I made some time ago.

> Good relations between the races painstakingly built up over the years are deteriorating rapidly in the South under the impact of the Supreme Court decision.
>
> As this course continues, the toll will doubtless be heavy and the way long. After these outside agitators have run their course, those responsible for this destruction of what were good race relations will retire from the scene of their damage.
>
> Then, as heretofore, the patient and understanding local leaders of each race will again start their painstaking labors, and gradually rebuild the understanding and good will between the races.
>
> This rebuilding process will require years, but it will come through the very groups that have built it up in the decades past, those of good will in each group.

Gentlemen, there is found the remedy, whatever it is, to this problem. Everyone seems to refer to it as a problem.

The Attorney General did and it is a problem. We are the ones that have that problem on our doorstep, and when I say "we" I include the colored people and the white people in that great area of our country, too.

We are the ones who have the problem. We will solve it. You cannot do it for us. You never have. The setbacks that it has had since that unfortunate war of a century ago have been brought about by the outsiders coming in, by the attempts to legislate on it. Those setbacks come and we have to retire because of the confusion that ensues.

The relations deteriorate and go down. Then when the pressure is off, the same groups go to building back.

Now without being personal again, that is the South that my children are going to live in. That is their problem more than it is anyone else's who does not live in that area.

We want you to hear us. We want you to hear us. As we present this problem we want you to hear us as to our ideas about a remedy. I don't think we are mistaken on this.

One hundred years is a good long time, even in the history of race relations. With all deference to all the other areas of this country, gentlemen, our people in our area of the Nation have made the best

and the most effective contribution to this great problem than have any other people in the Nation.

I thank you.

Senator HENNINGS. I am sure that on behalf of the subcommittee on constitutional rights, the Senator understands that we are here for the purpose of being enlightened, and that we appreciate very much the Senator being here today. He is a distinguished lawyer in his own right and we are very happy to have had you here, Senator Stennis.

Senator ERVIN. Mr. Chairman, I would like to ask the Senator a few questions and indulge in a few observations with him if I may.

Senator, I am very much impressed by your statement, and I am also impressed by your plea that those of us who represent the South be heard.

I want to add to it the prayer that we be heard patiently.

The sixth amendment to the Constitution, which was put in there at the demand of the States which created this Government, and which drafted the Constitution, provides that in all criminal proceedings the accused shall enjoy, among other things, the right to have the assistance of counsel for his defense.

The Constitution has been interpreted to give a man not only the right to counsel for defense in criminal actions, but also in civil cases. As I sat here listening to the Attorney General argue about speedy dispositions of cases under the proposed amendments, I thought of the fact that the supreme court of my State has handed down decisions giving defendants new trials where they were tried speedily on the ground that the right to be represented by counsel demands a reasonable time for the counsel to prepare the case and that their counsel had been denied reasonable preparatory time.

My court, in a State which was selected by the Attorney General as an example of inequity, has set aside convictions in cases under the constitution of North Carolina and under the Constitution of the United States on the ground that the speed with which the trials were conducted denied the accused the right of representation by counsel because it did not allow his counsel an adequate opportunity to prepare his case for trial.

As a member of that court I had the duty and the privilege of writing one of those opinions, in which we granted a colored man a new trial on the ground that he had been denied his constitutional right of trial by jury because the speed with which the court forced him to trial, denied his counsel a reasonable opportunity to prepare his case for trial. It happened in that particular case that the accused had been sentenced to death for the rape of a white woman, and it also happened in that particular case that there was not the slighest doubt on the evidence of his guilt.

I hate to hear the Attorney General condemn 3 of my 7,500 election officials, and urge the dereliction of 3 of my 7,500 election officials as a basis for changing all of the fundamental laws of the 48 States, to adopt a proceeding which, if it is carried out with the despatch he urges, would deny defendants their constitutional right to be represented by counsel.

The Senator from Mississippi made a very fine presentation of the fact that these local school board members and these local election officials are ordinarily humble citizens who receive virtually no com-

pensation and who are without the resources to defend themselves against the legal might of the United States.

I will ask the Senator, as one who knows the conditions which prevail in the South, if these amendments would not also cause a grave public injury, in that they would tend to make people refuse to take these lowly positions for fear that they might wander into the toils of the law because their opinions might disagree with those entertained by the Attorney General of the United States.

That is what I wonder.

Senator STENNIS. That is exactly right. That is the practical effect of it, and they would be running the chance——

Senator ERVIN. And I will ask the Senator this also: That by virtue of the disparity in the legal power of the Attorney General and the legal power of these lowly public officials, if the passage of these acts would not have a strong tendency to reduce the States of the Union to meaningless zeroes on the Nation's map, in that the Federal Government would be indirectly assuming charge through the Attorney General's office of all of the matters embraced within the purview of these amendments?

Senator STENNIS. It would largely finish up the State governments except as just administrative bodies with functions to building streets and highways and functions of this type.

I think it would be the final knockout blow of the States as units of government.

Senator ERVIN. It would mean, to all practical intents and purposes, that the Federal Government would actually assume unto itself the power to determine, among other things, what people shall be entitled to vote for the members of the most numerous branch of the State legislature under articles 2 and 17 of the Constitution of the United States, despite the fact that both the constitutions of the States and the Constitution of the United States itself commits those matters to the States.

Senator STENNIS. Yes.

Senator ERVIN. I was impressed very much by your exposition of the unwisdom of this legislation from the standpoint of the relations between the human beings who live in the South.

The Attorney General expressed a great confidence in the Federal Government. The South has suffered much in times past at the hands of the Federal Government, and we do not share that confidence. In my home town we had a garrison of Union troops stationed for 9 years after the last Confederate soldier had laid down his arms, and we had a series of reconstruction acts which were passed for political purposes. Strange to say, the Attorney General wants us to give him power to enforce one of those reconstruction acts by injunctive process.

Now it took us a long time to regain control of our own State government, and to recover from the effects of those acts, if we have, in fact, ever recovered from them.

I feel this way and maybe you share this view.

There is something rather tragic in the situation in which a southerner in the Senate or in the House of Representatives, who understands the situation in the South and loves the people of both races there, finds himself in the Congress. This is true not only at this moment but it has been true throughout history since the conclusion of the War Between the States.

This tragedy lies in this fact: Instead of being able to devote our energies solely to an effort to secure the passage of constructive legislation for the benefit of all of the people of the country, we are compelled to devote a large part of our energies to efforts to protect our States from outsiders, who are rather ignorant in many cases of our situation, but who think that they know better how to solve them than we do. We have to waste a tremendous amount of energy in that way, do we not?

Senator STENNIS. Yes, sir. You speak with great wisdom on the subject, Senator. I told someone yesterday that you can persuade the people of the South to do more and drive them to do less than any people in the United States.

Senator ERVIN. As a matter of fact, people have been trying to reconstruct us a long time, and we have not yet quite been reconstructed.

Proceeding along this line again, and making observations as well as asking questions, the Attorney General cited in his prepared statement incidents in two States as justifying this drastic alteration in the fundamental law of our country. One of them consisted of supposed derelictions of 3 election officials out of the 7,500 election officials in North Carolina, and the failure of 1 of those election officials to permit 2 colored boys to vote.

He said he did not know whether he had any other information of that nature about North Carolina. I would say this about North Carolina: That the white people of North Carolina have expended a larger proportion of their earthly substance for the education of members of the colored race than the white people of any other of the 48 States in the Union.

North Carolina maintains five institutions of higher learning for the benefit of the colored youth of our State. Two of these institutions, one the North Carolina Agricultural and Technical College at Greensboro, and the other the North Carolina College at Durham, N. C., are entitled to rank as universities. These institutions of learning are headed by colored presidents and have colored faculties. Although the population of North Carolina is only approximately 1 million, and although the colored populations of Illinois, Indiana, Ohio, Pennsylvania, New Jersey——

Senator HENNINGS. Senator, excuse me. I understood the population of North Carolina to be in the neighborhood of 4 million people.

Senator ERVIN. I am talking about the colored population. I want to make the observation that, although the colored population in North Carolina is approximately 1 million, and although the colored population in the States of Illinois, Indiana, Ohio, Pennsylvania, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, and Maine totals approximately 3,500,000, or 350 percent of that of North Carolina, the State of North Carolina alone employs approximately 1,000 more colored people as teachers in its public schools than the States of Illinois, Indiana, Ohio, Pennsylvania, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, New Hampshire, Vermont, and Maine combined.

I would like to say without fear of contradiction from any source that the State of North Carolina, as I said before, has spent a greater proportion of her earthly substance for the education of colored people than any other State in the Union.

I have lived among colored people all my life. It may be I am the only Member of the Senate who happens to live on a lot adjoining a lot where colored people reside. The good people of North Carolina of both races have worked hard together to bring about good race relations in that State. I think they have accomplished a marvelous job. I think that up to the time of recent agitations the people of these 2 races have lived in North Carolina and, I would say elsewhere in the South, in as harmonious relations as any 2 races anywhere on the face of the earth at any time in the earth's history.

I am compelled to agree with the Senator from Mississippi in the observation that recent court decisions and agitation on racial matters are impairing in large measure the fine racial relationships which have been built up in the South by painstaking people of both races.

I will ask the Senator from Mississippi if he agrees with me in this observation:

Our racial relations, like all human relations, can only be solved in a satisfactory manner by good will and tolerance on the part of people of both races on the local level where people actually live and move and have their being.

Senator STENNIS. And where they are confronted with their daily problems from day to day and week to week and year to year. I certainly heartily agree with the Senator.

Senator ERVIN. I do not think there is any other way to solve racial problems. I am sometimes almost driven to the conclusion that all of this agitation about racial matters is actually impairing our national sanity. Otherwise I would not think that legally trained men, like the Attorney General of the United States, would come in here and urge the Congress to make such fundamental alterations in the basic laws of this country.

Parts 3 and 4 of this bill—and I will ask the Senator if he agrees with me in this observation—would substantially impair the right of the American people to indictment by grand jury, to trial by jury, to have the assistance of counsel, and to have the privilege of confronting their accusers and cross-examining them.

That in order to give supposed civil rights to a minority of our people it would destroy in large measure constitutional rights which belong not only to the minority but also to all the American people.

Senator STENNIS. It certainly would. As a practical matter, it would destroy completely in many fields and substantially impair them in others. As you say, a basic reversal of form and emphasis as to our fundamental rights of government would ensue.

Senator ERVIN. I know I am imposing with these observations. I know the record of the Senator from Mississippi as a judge, and I know that all people who came before him in that capacity, regardless of race, color, or anything else, received fair and impartial trials. Having been active in the administration of law in North Carolina for a long time now and being familiar with the courts of North Carolina, I would say the people of North Carolina get fair trials regardless of any of these extraneous matters. As a matter of fact, if southern judges err at all, they do so by being merciful to colored people; is that not true?

Senator STENNIS. I think that is the general pattern and the general practice; yes.

If I may mention one other thing, Mr. Chairman, about the members of the bar, some of the most pleasant memories I have as a courtroom official were the response on the part of members of that bar, outstanding lawyers, when I appointed them without 1 cent of pay whatsoever to defend men in court who were unable to employ counsel. They would dive in, after preparation, and fight to the limit some of the great legal battles of the Nation right there in these courtrooms by these very able and outstanding lawyers. They would fight those cases to the last ditch, and they are very able and very capable men.

I appreciate the Senator's references to the great State of South Carolina, which has taken a great lead in many ways with many of the problems we have had for a long, long time, and ahead of other States.

You got off to a fine start ahead of other States in many ways.

Senator HENNINGS. I assume the Senator meant to say North Carolina?

Senator STENNIS. Did I say South Carolina?

Excuse me, I meant North Carolina. If I may mention one point the Senator from Illinois, Mr. Douglas, mentioned to me once without me ever mentioning the subject to him. In this matter of education the State of Mississippi for some years past paid the highest percent of its tax dollar for schools of any State in the Nation.

That is not true for the last 2 or 3 current years, but it was true for several recent years. And your reference there to these colored schoolteachers; they are one of the great assets that we have in our State; and they are now paid, I am very thankful to say, and have been for a good number of years now, on an absolute equality with all teachers.

They are all on the same scale of pay, based upon their educational training and years of experience.

I think we copied that pattern from the great State of North Carolina.

Senator ERVIN. As a matter of fact, our law provides for equality of pay, but due to the character of degrees and increments under our law, as a matter of fact the average colored schoolteacher in North Carolina receives higher pay than the average white teacher.

Senator STENNIS. From what they have said to me, the colored schoolteachers know the utter futility of trying to operate the schools by police measures. They are against these measures.

I thank the gentlemen of the committee.

Senator HENNINGS. I thank the distinguished Senator from Mississippi for appearing here this afternoon to present his testimony.

According to the list of witnesses furnished—excuse me, I did not ask the distinguished Senator from Nebraska if he had any questions.

Senator HRUSKA. I have no questions.

Senator HENNINGS. The next witness is the senior Senator from the State of Illinois, Senator Paul H. Douglas.

Is Senator Douglas here?

We are very glad to hear from you, Senator Douglas.

STATEMENT OF HON. PAUL H. DOUGLAS, UNITED STATES SENATOR FROM THE STATE OF ILLINOIS

Senator DOUGLAS. Mr. Chairman, I want to thank you for your courtesy in permitting me to appear in such a limited period.

May I say that I count it a distinct honor to follow the Senator from Mississippi, whose very able statement I heard with interest.

The Senator from Mississippi is known to us all as a man of high honor, and one of the noblest representatives of his section, and as I listened to him I thought that he had made the best presentation for his point of view and for his group in his section that could be made.

I differ from certain fundamental assumptions which were implicit in what the Senator from Mississippi said, but he certainly conducted his argument on the most elevated level and in the best of spirit.

While I do not presume that I can equal him in this respect, I shall try to follow his example, although disagreeing with his principles and his argument.

Senator HENNINGS. We are very glad to have you proceed, Senator Douglas.

Senator DOUGLAS. Mr. Chairman, I appreciate the opportunity to appear before this subcommittee and testify briefly—and I hope it will be briefly—in support of the principles embodied in the civil rights measures introduced in the Senate by the able chairman of the subcommittee, Mr. Hennings, by the Senator from Minnesota, Mr. Humphrey, and my colleague, Mr. Dirksen.

The subcommittee, I understand, also has before it a draft of a bill headed "Subcommittee Print, January 31, 1957," which brings together a number of highly desirable provisions taken from various ones of these separate bills, and I want to congratulate whoever it has been on the committee who has prepared this composite bill, because I think it will make the discussion much less confusing.

Senator HENNINGS. We have so done, Senator, for that purpose.

Senator DOUGLAS. I want to thank the chairman, and I want to congratulate the chairman.

In my opinion, this bill is a highly commendable composite of the proposals. Most importantly, it unites the best features of all the bills to protect the right to vote, including provisions for preventive relief by injunction.

It also includes the provisions for a Commission on Civil Rights and for a Civil Rights Division in the Department of Justice.

In addition, title IV of the bill would afford additional protection of persons through an antilynching act, and title VI would extend the legal protection against violence now accorded members of the Coast Guard and certain Federal employees to the members of the Armed Forces.

This is a substantial, meaningful bill. It has been drawn from the legislative proposals of members of both major parties. It deals with some of our most basic rights. Without in any way minimizing the importance of other proposals to act upon the poll tax, discriminations in interstate travel, employment practices, and similar matters before this and other committees, I believe the adoption of this measure would be a great gain for equality of opportunity in American life.

I am very glad, therefore, to urge this subcommittee and the full Judiciary Committee to give this "subcommittee print" bill its favorable consideration and to pass it on to the Senate at an early date.

With the assurances given by the leadership of both parties in the Senate, with the support of the administration expressed earlier by the President and here today by the Attorney General, and with the

backing of the great majority of the American people, perhaps we can begin to hope that the stalemate on civil rights in Congress will be ended.

You have it within your power to take the first essential step in a new advance toward human freedom.

Any review of the past half-century reveals many gains in equality of opportunity. These have resulted from both voluntary and governmental action. Court decisions going back nearly 40 years and culminating in the school cases have opened many doors. Administrative actions under Presidents Roosevelt, Truman, and Eisenhower have likewise eliminated many discriminations.

But since the enactment of the 14th and 15th amendments to the Constitution and the civil rights laws of the reconstruction period, the direct gains by Federal legislation have been nil.

Since 1877, or 80 years ago, there has been no gain, so far as Federal legislation is concerned, in the field of so-called civil rights.

Senator HENNINGS. Do I understand the Senator to say 18 years ago?

Senator DOUGLAS. Eighty—since 1877 there have been no gains by Federal legislation.

Congress has not kept pace with the courts—or the executive—or the people. Neither has it measured up to the needs.

Despite significant—and often heartwarming—gains, there is no question that denials of equal opportunity are still many and grievous. We find them in employment, in education, in transportation, in housin, in health facilities, in public recreation, in the right to vote, and even in our courts.

These denials are not limited to any one section of the country, although they may be more acute and are more acute in some than in others.

In varying degrees and in varying forms, they are nationwide. The record of the hearings before Senate and House committees—and, indeed, the daily press—is full of the evidence of our failures in these matters.

This form of man's inhumanity to man, wherever it occurs in our Nation, violates one of the fundamental principles of our democracy, namely, that men are to be judged on their individual merits, not according to the accident of their membership in one race or another, or by their choice of a religious affiliation.

It offends the American sense of fair play and breaches our basic religious and political teachings, that "God hath made of one blood all nations of men," and that "all men are created equal and are endowed by their Creator with certain inalienable rights."

It is also clear today that these denials of our constitutional and religious principles adversely affect the struggle of freedom against tyranny in the world. With the Communists reaching out to the uncommitted people of the Middle East and Africa and southeast Asia, each housing riot in Illinois—and I may say, Mr. Chairman, that I take some pride in the fact that when a housing riot occurred in my own State, I took the floor of the Senate to denounce that action—each school riot in Kentucky, and each bombing of a pastor's home or intimidation of a would-be Negro voter in Alabama or Mississippi, becomes not only an affront to human dignity, here in this country, but a defeat for freedom in its tough world struggle for survival.

The voluntary processes that slowly change men's hearts, the local and State laws and Federal judicial and executive action that have advanced men's rights and yet fallen so short of the goal of equal opportunity, therefore, need the new impetus and backing of congressional action. And the time for action is long overdue.

Of the various worthy proposals before you and included in your subcommittee print bill, the most fundamental in my view is that which would strengthen the protections of the right to vote. This right is denied not only by the poll tax in five States, but even more flagrantly by open and covert intimidation in numerous others.

The record of discriminatory administration of voter qualification tests, of economic pressures, and bodily threats to prevent persons from voting and of systematic purging of large groups from voter lists is a long one.

Now, Mr. Chairman, may I point out that most coercion is tacit and latent rather than open and active. One need have only one or two cases of actual physical violence being practiced, or even only a few cases of threats of violence.

But this will spread through a whole community or through an area, and will frighten large numbers of persons so that they will not assert their right to vote, lest what has happened in other cases should happen to them.

Just therefore as we cannot measure the depth of an iceberg by the amount which is above the surface, so we cannot measure the actual intimidation by the cases of physical violence or threats of violence which have actually occurred.

It is said that six-sevenths of an iceberg is below the surface. I am sure that six-sevenths of the coercion or more than six-sevenths of the coercion which occurs most notably in our Southern States is latent. It is the result of the violence and intimidation which may be practiced, and which deters not only the citizen who is the object of the attacks and threats, but also many another from asserting his right to vote.

Then of course with the citizen not asserting his right to vote and staying away from the polls, lest something happen to him, no violence is practiced upon him.

In other words, this coercion moves quietly, and you need have only a few instances of violence for it to have a mighty effect.

Yet, Mr. Chairman, if we can help to restore and maintain this right to vote, many of the other present discriminations practiced against Negroes, Indians, and Mexican-Americans will be self-correcting.

For once these citizens have the effective right to vote, they will have political power. Public officeholders will then have to take their needs and wishes into account, and these citizens will be able to redress their just grievances by constitutional means and within the framework of the democratic process.

In other words, Mr. Chairman, in a democracy the government is ultimately responsive to the needs and wishes of the voters. If a large group of voters are effectively debarred from voting, those who run for office and are elected to office need not take their interests into account.

But once they vote, then their wishes and interests become real factors in the situation and have to be taken into account in order to command a majority.

So this is why it seems to me basic that the right to vote should become a real and effective right, and not merely a nominal and legal right.

This protection of the right to political participation which is the subject of title I of your subcommittee print bill, is therefore a vital key to many other rights.

It seems to me wise to cover primaries, as this bill does, in the elections protected by the criminal provisions of the law. But I am particularly impressed by the provisions permitting the Attorney General to proceed in Federal courts for preventive relief by suits for injunctions. Punishment after the event is never a solution for a denial of rights.

Preventive action before the denial is complete may actually preserve the right that would otherwise be lost.

In any measure that the Judiciary Committee reports out, I hope the sections to protect voting rights will be a central part.

Mr. Chairman, I am not a lawyer, and I do not pretend to speak with any authority on the legal issues involved.

There are several facts connected with the use of the injunction to protect voting rights which are not parallel to the results of the use of the injunction in certain other cases, notably labor cases.

As I understand the theory of the temporary injunction, it is to freeze a situation for a period of time until a more deliberate hearing can be held upon the equities of the case and upon the issues in dispute.

What our labor friends have objected to in the use of the labor injunction is that it attempts to freeze a situation which is not static; that by denying to labor the right to picket, for example, or to dissuade others from taking a position with or patronizing a given firm, in effect the court permits active economic pressures to operate so that when the question comes up for decision as to whether the injunction will be made permanent, the final situation is very different from what it was when the temporary injunction was sought and granted.

By that time, the union may have been broken, the strike may have been lost, the strikers may have been replaced by strikebreakers, and the issue is over.

So in the attempt to freeze a temporary situation, what in reality has happened has been that you permitted the situation to change.

Let us then look at the use of the injunction to protect the right to vote.

What injury is done after the election occurs by the prior issuance of a protective injunction?

What possible injury is done? What has been done is to grant to persons who are otherwise qualified to vote, the effective right to vote. I see no damage that is done. I see no swift changing situation. The injunction does not result in the loss of legitimate rights.

Rather obstacles are swept aside so that constitutional rights can function. This, it seems to me, permits a differentiation between the use of the injunction in such matters as these, and the past abuses of the injunction which have been very real in labor disputes.

There is another matter upon which I speak with great diffidence, and subject to correction. Suppose the injunction is violated and the

district judge of the court either fines or imprisons or gives sentence of imprisonment upon the man or men who he thinks have violated the injunction.

It is true that this can be done under contempt proceedings in many cases without a jury trial. But I think I am correct in my belief that this is subject to review by the court of appeals, and that it is also naturally subject to review by the United States Supreme Court.

So, while the initial jury trial may not be present in many situations, the ultimate rights of review are preserved. So, Mr. Chairman, I want to suggest that these terrors are not as real as those which my very distinguished colleague has mentioned.

Senator ERVIN. I regret to say that I cannot agree with you on this last thing.

Senator DOUGLAS. As I say, I am not an attorney.

Senator ERVIN. The right of appeal is an illusory right in a contempt proceeding, because, if the facts are found by the judge, the trial judge, without a jury, those findings are accepted by the appellate court.

There is a statute which says that, where a man is charged with violating an injunction issued in a labor controversy, he shall have the right to trial by jury. The question in all contempt cases is whether the accused has disobeyed the order of the court.

I can see no fundamental basis for any difference between the rights of men insofar as questions of contempt are concerned, whether they be laboring men or election officials.

I think that all men charged with contempt ought to be fed out of the same legal spoon.

And I will say to the Senator from Illinois that I am in entire sympathy with the statute which says that no man who is charged with contempt for violation of an injunction issued in a labor controversy can be punished until he has had an opportunity to be tried by a jury. I think that that same privilege ought to be extended to every human being in a contempt case.

I do not think you can make a valid distinction—I am talking about after the election—as far as the contempt is concerned.

Senator HENNINGS. May I say to the distinguished Senator from North Carolina that I have just had a message urging that I answer a telephone call. Would you please preside for about 5 minutes?

Senator DOUGLAS. It is sometimes said that a layman who tries to play the part of his own lawyer has a fool for a client, so you will forgive me if I raise some legal issues.

But I would like to ask you, as a matter of information, if the contempt is also a crime—and many acts of contempt for violations of orders protecting voting rights will be crimes—may it not be that the trial of the contempt here, too, may be before a jury?

Senator ERVIN. No. The trouble is the Attorney General is bringing us in under a section which would rob the people of that right. That is the reason he provides that the suit be brought in the name of the United States. The existing statute provides that, when the suit is brought in the name of the United States, the accused has no right to trial by jury, notwithstanding the fact that his contempt is a criminal contempt.

Senator DOUGLAS. Senator Ervin, I am certainly not going to argue this point with you. Under section 103 (b) of the committee print

bill, the injunction may be sought by the party injured or threatened. Contempt of the court's orders, in those cases which also constitute crimes, would seem to come within the laws permitting jury trials. But it is a complicated matter and I think it can be developed later.

Senator ERVIN. Regardless of the validity of your views with reference to what happens before the injunction is issued, I see no reason in the world why all reasonable men can't agree that, when the question arises whether a man should be punished for contempt based upon a past disobedience of an injunction, all human beings ought to be tried and have that question determined by exactly the same procedure. If I have any competence whatever, it must be in the field of law, where I have spent most of my life. I know that on a contempt hearing before a judge the accused is at a great disadvantage, because he is charged with disobeying the judge, and no judge, I assure you, likes to be disobeyed.

That is especially true with Federal judges because, unlike State judges in many States, the judge holds office for life and he has no superiors except the appellate Federal courts.

Someone said that power corrupts, and that absolute power corrupts absolutely.

Now I do not say that this happens to all Federal judges, but where a man holds a job for life he does not have to answer to anybody on earth, he is not likely to acquire the capacity to look with great leniency on anybody who is alleged to have disobeyed one of his decrees.

Therefore, I say this irrespective of what may happen before the injunction is issued: Where the issue arises afterward as to whether the injunction has been obeyed or disobeyed, the question ought to be determined for all human beings by exactly the same procedure.

As one who trusts the people, and the jury being the people, I think that this bill ought to be amended so as to provide, as in the case of labor disputes, that no person shall be punished for contempt until he has been tried by a jury in a proceeding in which he has a full opportunity to confront and cross-examine his accusers, and a full opportunity to present all available evidence in his own behalf.

I do not think there can be any valid basis for a distinction as to the procedure to be followed where the question is simply whether the man has violated the injunction.

Now, injunction is a terrible process. Labor opposed government by injunction justifiably for many years and thereby obtained the passage of the Norris-La Guardia Act.

The trouble with injunctions is illustrated in the Clinton, Tenn., case. The injunction there is so broad as practically to deprive any person who has knowledge of the existence of the injunction of the right to freedom of speech in respect to the segregation issue.

I do not like government by injunction in this case or any other case, for that reason.

In other words, I think that we could reasonably disagree as to what should happen in connection with the procedure before the injunction, but I believe you and I would agree, if you stopped to ponder it, on what should happen after the matter.

Senator DOUGLAS. Of course, no remedy is perfect in these matters.

Senator ERVIN. That is true.

Senator DOUGLAS. It may also be useful to recall that a court might apply a contempt order punishment only so long as the violation,

such as an unlawful removal from the voters' registry list, continued. The defendant could terminate the penalty by terminating the violation.

The stigma and legal effects of a contempt punishment are also much less severe than in the case of convictions for felonies.

I would also respectfully like to suggest that the Federal judiciary with lifetime appointments is, in a sense, insulated from local passions and prejudices, and I think you would have to weigh that against the possibility of arbitrary action on their part.

Senator ERVIN. I believe that that is a theory rather than a condition.

Your district judges live in the localities in which they hold court.

Senator DOUGLAS. Yes, but they are not dependent for their position upon the passions and the prejudices as well as opinions of the electors, or those who go to the polls.

As I say, you have to weigh both of these things, and I recognize that the appeal for a jury trial is very strong.

It makes very strong appeal to me. But I am not certain that that is as good a remedy as the injunctive process to prevent unlawful interference with the right to vote. This is prevention, not punishment. And only if the unlawful interference continues is there a later possibility of punishment for contempt.

Senator ERVIN. I have a feeling that where the only question is whether the accused should be punished for past disobedience of an injunction, you cannot make any valid distinction between one man and another in respect to the procedure by which his guilt is determined.

I think all of them ought to be fed out of the same legal spoon, and I think all of them ought to be given the right to trial by jury.

For that reason, I think this bill ought to be amended to conform to the labor statute.

I do not think any distinction can be drawn between a southern election official or a southern school board member and a laborer.

Government by injunction is a terrible thing. Experience shows that it is dangerous because injunctions are often too broad or too indefinite.

A person may be bound by the injunction if he is not a party to the action, never has had an opportunity to contest its propriety on the merits. He can be nevertheless punished for contempt.

Injunctions sometimes make fearful injustices possible in legal controversies.

They just say you cannot do this or cannot do that. Some of these things enjoined find their only foundation in the order of the judge, and he can be punished for something that the law does not authorize.

I thank he Senator for his statement that these conditions which he thinks should be remedied by those bills are not confined entirely to my area of the country.

Senator DOUGLAS. By no means, Senator, and I think we of the North should make that clear. We have no feeling of moral superiority. Our practices I think are somewhat better, probably due to the smaller percentage that Negroes constitute of the population with us, and the fact that we are not subjected to the same fancied pressures that the South feels subjected to.

Frankly I think our treatment of the Negro is a national sin, and one that we of the North should be contrite for as well. And so I hope you will not think there is any disposition on my part to make the South a particular whipping boy. The problems are nationwide.

It so happens that you have a much larger percentage of Negroes in the South than we have in the North, and that was where slavery did exist. As a result, that has colored the whole set of institutions and the attitudes which are there.

Mr. Chairman, the logic of a Commisison of Civil Rights to give us greater knowledge and understanding of these complex problems, of a special division in the Department of Justice to give greater attention to the enforcement of existing laws, of a Federal antilynching law to help eliminate this crime from American life, of broader powers to move for injunctive relief against various violations of civil rights, and of including the armed services in protections against violence now given to the Coast Guard, seems to me too clear to require elaboration.

If elaboration is desired, the hearings back for 20 or more years on some of these subjects, will provide it.

I shall not take more of the committee's time, for I am sure you are anxious to move speedily. I am gratified that you have started and hope to conclude these hearings early.

This may enable you to gather the necessary quorums and to get the bill out of committee and before the Senate in time to give us a reasonable chance, after full debate, to reach a vote.

Should difficulties develop within the committee that seem to impose undue delays, the other Senators who have gone on record in support of these civil-rights principles could help you move this measure to the floor. And some of us would be glad when necessary to give them that opportunity and embrace it ourselves.

And once this bill is before the Senate at a reasonably early date, with all the support that has been promised we shall hope to be able to surmount the obstacle that hitherto has blocked the passage of such legislation, the eternal filibuster.

If all of those who have said—contrary to my belief—that the present Senate rules permit the passage of a meaningful civil-rights bill will vote for it and for cloture, after a proper debate, perhaps it may yet succeed. No one will be happier than I to have it proved that the Senate under its present rules is not the graveyard of civil rights.

But with the memory still fresh in my mind of what can happen to civil-rights bills late in a session of Congress, I would earnestly urge the committee to move with all due—if not deliberate—speed.

It is up to this committee first and to all of us in the Senate, then, to determine whether we shall merely reflect the conflicts and failures of our society on these important issues of human freedom—or represent in our affirmative action the best hopes and ideals of our Nation for equality of opportunity.

Mr. Chairman, while careful legal arguments may be most persuasive with the eminent members of the bar who make up this committee, I would like to file for the committee's consideration and for inclusion in the record of these hearings two articles of noted religious leaders which I have found quite basic and moving.

The first is a message for Race Relations, Sunday, February 10, issued by the National Council of Churches and drafted for it by the Reverend Martin Luther King, of Montgomery, Ala.

The second is an article entitled "Challenge to America" by Father L. J. Towney, S. J., director of the Institute of Industrial Relations at Loyola University in New Orleans.

This article was printed in Commonweal for September 21, 1956.

Senator HENNINGS. Is it the Senator's desire that the articles be made a part of the record?

Senator DOUGLAS. I would appreciate that.

Senator HENNINGS. Without objection the articles will be included and made a part of the record.

(The articles are as follows:)

FOR ALL. A NONSEGREGATED SOCIETY[1]

MESSAGE FOR RACE RELATIONS SUNDAY, FEBRUARY 10

All men, created alike in the image of God, are inseparably bound together. This is at the very heart of the Christian Gospel. This is clearly expressed in Paul's declaration on Mars Hill: "* * * God who made the world and everything in it, being Lord of heaven and earth. * * * made from one every nation of men to live on all the face of the earth, * * *" Again it is expressed in the affirmation, "There is neither Jew nor Greek, there is neither slave nor free, there is neither male nor female; for you are all one in Christ Jesus." The climax of this universality is expressed in the fact that Christ died for all mankind.

This broad universality standing at the center of the Gospel makes brotherhood morally inescapable. Racial segregation is a blatant denial of the unity which we all have in Christ. Segregation is a tragic evil that is utterly un-Christian. It substitutes the person-thing relationship for the person to person relationship. The philosophy of Christianity is strongly opposed to the underlying philosophy of segregation.

Therefore, every Christian is confronted with the basic responsibility of working courageously for a nonsegregated society. The task of conquering segregation is an inescapable must confronting the Christian churches. Much progress has been made toward the goal of a nonsegregated society, but we are still far from the promised land. Segregation persists as a reality.

The problem of segregated housing remains a critical one in every section of the Nation. Segregated transportation facilities continue. Many communities are complying all too slowly with the Supreme Court's decision on desegregation in the public schools. Some States have risen up in open defiance, with their legislative halls ringing loud with such words as "interposition" and "nullification" and with schemes of evasion. The churches themselves have largely failed to purge their own bodies of discriminatory practices. This evil persists in most of the local churches, church schools, church hospitals, and other church institutions.

The churches are called upon to recognize the urgent necessity of taking a forthright stand on this crucial issue. If we are to remain true to the Gospel of Jesus Christ we must not rest until segregation is banished from every area of American life.

Any discussion of segregation in America against the background of moral principles emphasizes the urgent need for prophetic voices. To be sure, there are communities which are successfully integrating schools and there are courageous persons in many communities who are standing steadfastly for the principles of Christian love and justice. Nevertheless, there remains need for more people in every community to join them in crying out as Amos did, "* * * let justice roll down as waters, and righteousness like an overflowing stream." Christians must decide whether they will obey the eternal demands of the Almighty God, or whether they will capitulate to the transitory demands of the defenders of segregation.

There are those who are telling us to slow up in the move for a nonsegregated society. But the true Christian knows that it is morally wrong to accept a compromise which is designed to frustrate the fulfillment of Christian principle. The time is always ripe to do right. It is true that wise restraint and calm reasonableness must prevail in the process of social change. Emotion must not

[1] The National Council of Churches is indebted to Dr. Martin Luther King for drafting this message. Dr. King is minister of the Dexter Avenue Baptist Church, Montgomery, Ala., leader of the successful boycott of segregated buses in that city.

run wild, and the virtues of love, patience, and understanding goodwill must dominate all of our actions. But these considerations should serve to further the objective and not become a substitute for pressing on toward the goal. We face the hard challenge and the wondrous opportunity of letting the spirit of Christ work among us toward fashioning a truly Christian nation.

If we accept the challenge with more devotion and valor, we can speed the day when men everywhere will recognize that we "are all one in Christ Jesus."

Challenge to America

"If We Cannot or Will Not Solve the Problem of Race Relations, Our Future Is in Serious Jeopardy"

L. J. Twomey [1]

The problem of race relations in the United States is of key importance. If we cannot or will not solve it in the tradition of genuine Americanism, then our future is in serious jeopardy. For in no other particular has the disparity between what we preach and what we practice been as glaring.

Basic to the problem of race relations is the white man's assumption of superiority. Just when the white race made up its mind that it was the master race is lost in the dim historic past. But the assertion, either implicit or explicit, of white supremacy is written all over the record of the western world at least since the age of the great discoveries in the late 15th century and thereafter.

In the Western Hemisphere, notably in the northern half, the white supremacy fallacy got its most vicious expression with the beginning of the slave trade in the early 17th century. By colonial days, slavery had become an established institution, especially on southern plantations. And when we emerged from the Revolutionary War as a new Nation, slavery had been built into the very structure of our political, economic and cultural life. Almost 90 years and the fighting of one of the bloodiest civil wars in history were to elapse before it would be eliminated as an accepted American practice. Yet it is historically false to maintain that segregation, rather than the concept of white supremacy, is rooted in long-standing traditions. Actually, it was not until the 1890's that disenfranchisement laws were enacted. And it was not until the early part of this century that the segregation pattern became fixed in southern laws and customs.

Ironically, in view of the present clamor about the Supreme Court, of all the influences at work during this period none was more effective in making segregation part of the accepted pattern in American life than the court. Take, for example, the *Plessy v. Ferguson* decision of 1896. This decision was concerned with the question of whether a State could segregate Negro train passengers from white without violating the constitutional rights of its citizens. The court said "Yes," provided the service was equal. By this decision, one of the most famous ever handed down by the Supreme Court, the "separate but equal" doctrine was written into American law. A precedent was thus set which was intimately to affect practically every aspect of Negro-white relations in the United States from that time on.

Oddly enough, the lone dissent in this case by Justice John Marshall Harlan, is more widely quoted than the majority opinion, and it has important lessons for us today. It reads in part: "But in view of the Constitution, in the eye of the law there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our Constitution is colorblind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law. The humblest is the peer of the most powerful. The law regards man as man, and takes no account of his surroundings or of his color when his civil rights as guaranteed by the supreme law of the land are involved. It is, therefore, to be regretted that this high tribunal, the final exposition of the fundamental law of the land, has reached the conclusion that it is competent for a State to regulate the enjoyment by citizens of their civil rights solely upon the basis of race."

And Justice Harlan continued: "The destinies of the two races in this country are indissolubly linked together, and the interests of both require that the com-

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non government by all shall not permit the seeds of race hate to be planted under the sanction of law. What can more certainly arouse hate, what more certainly create and perpetuate a feeling of distrust between these races than the enactments which in fact proceed on the ground that colored citizens are so inferior and degraded that they cannot be allowed to sit in public coaches occupied by white citizens? * * * In my opinion," he concluded, "the judgment this day rendered will in time prove to be quite as pernicious as the decision made by this tribunal in the Dred Scott case. * * * The thin disguise of equal accommodations for passengers in railroad coaches will not mislead anyone, nor atone for the wrong this day done. * * *"

This analysis by Justice Harlan is, I think, the only valid interpretation that can be placed on the American Constitution. If his dissent had been adopted as the majority opinion, the subsequent history of race relations in this country would not have been such as now to imperil the future of democracy. Unfortunately, it was not.

Through the years after 1896, it is true that the harshness of *Plessy* v. *Ferguson* was softened in certain important aspects. As early as 1917 the Supreme Court outlawed zoning laws which enforced segregated housing. In subsequent years, all forms of segregation in interstate travel were also ruled out. And within the last 10 years, the Court has required many State universities to accept qualified Negro applicants. In none of these cases, however, was the issue joined as to the constitutionality of the "separate but equal" provision of the 1896 decision.

In the years between 1948 and 1954, however, the Supreme Court, in a series of important civil rights cases, gave clear warning that it would not tolerate for much longer "separate but equal" as a constitutionally acceptable practice. And on May 17, 1954, occurred one of the great events in American history. On that day a unanimous Supreme Court decision repudiated the "separate but equal" doctrine for the travesty on truth and justice which it had always been, declaring that "separate educational facilities are inherently unequal" and in violation of the equal protection of the laws provision of the 14th amendment and the due process of law provision of the 5th amendment. The Court did not tell the several States in question how to run their respective school systems. But it did tell them that they could not run their schools so as to do violence to the fundamental law of the land. And exactly 54 weeks later, the Court ordered that its May 17, 1954, decree be put into effect in a manner "consistent with good faith compliance at the earliest practicable date."

Around these two Court actions there has raged a battle of vast and fateful dimensions. The battleground is confined almost exclusively to the South. Resistance to these decisions has precipitated our most serious internal crisis since the Civil War. It will continue to be fierce and articulate for an unpredictable period.

The tragic fact is that governors of States, Members of Congress, and State legislatures, prominent civic, professional, business, and even labor leaders do not hesitate to attack openly not only the decisions of the Court, but the character and loyalty of the Justices themselves. This is not to speak of the even more reprehensible tactics of the white citizens' councils and other like-purpose organizations, which have large and influential membership throughout the Southern States. Through these rebellious groups, political, economic, and even physical reprisals have been threatened and in many instances visited upon those who agree with the Court and loyally urge that its mandates be carried out with "good faith compliance."

The typical southern attitude holds that only in a rigidly segregated society can "the southern way of life be preserved." It is the claim of most southerners, then, that in resisting the Supreme Court, they are defending "the sacred traditions of the South." In reply to that claim I repeat here what I have said on many southern platforms: "I am a southerner. I was born and raised in what is popularly known as the Deep South. I believe I know this region, its problems, its strength, its weaknesses. In the light of the knowledge, I yield to no other in my loyalty and devotion to the things that are genuinely southern. But as a southerner I assert with all the emphasis at my command that no traditions of the South are worthy of respect, much less of un-Christian, undemocratic defense, which violate the elementary demands of human decency. I am a southerner, intensely proud of my southern heritage. But I am before all else a Christian and an American, and I will never recognize that any demand of my southern loyalty can come between me and my loyalty to God and to America."

In blind pursuit of their objective "to keep the South a white man's country," these misguided southerners are actually inflicting grave injury on the South. Already this injury can be measured in terms of serious economic and cultural losses. And this is not to speak of the lasting damage being done to the good name of the South.

Even these losses, however, are as nothing compared to the damage inflicted on America. If it is to survive, America must gain the allegiance of the 800 million people, one-third of the earth's population, who as-of-now are uncommitted either to communism or to democracy. These hundreds of millions, with their human and material resources, constitute the balance of power in the world today. And of this vast number, the overwhelming majority are colored people. It was with these facts in mind that Secretary of State John Foster Dulles told the American people in December 1952: "Let our people intensify their determination to respect human rights and fundamental freedom. Our discriminations at home and abroad are not only a moral blot on our so-called Christian civilization, but they are a major international hazard." And Vice President Richard Nixon, in December 1953, declared: "Every act of racial discrimination or prejudice is blown up by the Communists abroad and it hurts America as much as an espionage agent who turns over a weapon to a foreign enemy."

In the context of such warnings, any American, in the South or in the North, who holds to the theory of white supremacy and actively promotes the political, economic and social restrictions necessary to make the theory particularly effective, is in fact undermining this country's strength in the face of the enemy. It is for such a southerner or northerner to defend himself against the charge of un-American activity.

In view of all this, how can we explain what is happening in the South? I know no completely satisfying answer to that question. Southerners by and large are good people. But most southerners have for generations taken for granted the political, economic and social patterns which assigned the Negro to a second-class status. Until quite recently many of them did not give a second thought to what were objectively grave violations of human rights, and they are now victims of uncritical conformism to a system, the basic evil of which they never challenged. Having grown up accepting segregation as an integral part of Southern living, they now argue, by an involved process of rationalization, that the injustices and uncharitableness of the present racial system are only accidentally associated with segregation. They do not condone these distortions of right order, but they will not admit that racial segregation as such is immoral. They claim that greater and greater effort must be made to bring equality of educational and economic opportunity to the Negro, but they insist that this objective must be realized within the traditional framework of separation, enforced both by law and custom. Because of these deep-rooted attitudes, the Supreme Court decision struck with staggering force, and the South was stunned. Since then, fear and hysteria, whipped up by the extremists, have all but rendered powerless the relatively few southerners who received the Court's decision with good grace and even enthusiasm.

Nevertheless, there is a brighter side. It is certainly not my intention to minimize the grim seriousness of the racial crisis in the South, but there is solid ground for hope. Sooner rather than later the angry wave of emotional recklessness will spend itself. Probably within 5 years the South will have begun effectively to assert its better self. Then conformity to the dictates of morality and law will become the rule of the times.

What evidence is there for this optimism? In the first place, the southern conscience, despite all appearances, is profoundly disturbed. There the work of religious leaders of all faiths has been tremendously important. Consider, for example, the work of the great Archbishop of New Orleans, the Most Reverend Joseph Francis Rummel. For years he had proved himself the champion of justice and charity for the Negro, and, in the face of certain and spirited opposition, he placed himself and the Catholic Church within his jurisdiction solidly behind the Supreme Court. His most telling display of courageous leadership came in the form of his now famous pastoral letter of February 11, 1956, in which he invoked his authority as a successor of the apostles and solemnly declared: "Racial segregation as such is morally wrong and sinful." This declaration has caused innumerable southerners, Catholic and non-Catholic, to look into their consciences as they have never done before. From such soul searching is coming a deeper understanding of what justice and charity demand. And this new insight will be the basis upon which a true sense of brotherhood between Negro and white can be fostered.

Another sign of happier times to come is the intensive educational process now in progress. It is taking place around cracker barrels in country stores, in the setting of professional organizations and fashionable social clubs, on street-corners, at the family dinner table, in formal lectures, from the pulpit, in the classrooms, through the newspapers, over TV, and the radio and even in the citizens' council meetings. No other topic so engrosses the attention of high and low, rich and poor, literate and illiterate, segregationist and integrationist, as does the question of race relations. Hitherto, if mentioned at all, it was by way of casual reference. Assuredly, traditional southern attitudes are being jolted as never before.

A third and final chapter in the foreshadowing of a happier future is now being compiled quietly but ever so effectively on college and university campuses all over the South, and in the thought and action, the minds and hearts of ever growing thousands of southerners. They know that segregation and all it implies is an affront to the God given dignity of both Negro and white, and a betrayal of the basic truths of democracy. They are thoroughly out of patience with the transparent ruse of using the perfectly legitimate principle of State's rights in order to tear down human rights. They are unwilling any longer to profess one set of norms for human behavior and to act according to another. Hence they want the South to accept graciously the decision of the Supreme Court and to work earnestly toward transplanting its letter and spirit not only into our educational system but into our religious, political, economic, and cultural institutions as well. They want all this because they love the South and because they want the South to prove to a skeptical world that democracy is what we claim.

At the start, I observed that the race problem is one of acute concern for all Americans. This is true in the North as well as in the South. It is easy enough to be critical of the South, and I readily admit that it is not beyond criticism. But it is also much easier to examine the other fellow's conduct than to look into our own. In the South there are laws to force the Negro into an underprivileged position. Outside the South, there are more subtle forms of discrimination. Go to Washington, Philadelphia, New York, Cleveland, Detroit, Chicago, St. Louis, and even Los Angeles; in these areas you will find, not in quantity I grant, but in quality, if I may use that word, as glaring examples of man's inhumanity to man as you will find anywhere in the South. I say this, not in any querulous mood, for I have never believed that it makes the southern pot any cleaner to call the northern kettle black, but to emphasize the critical importance of human relations not so much as a southern problem or as a northern problem, but as a national and a world problem.

It is time for all of us to take with deadly seriousness the great eternal truths. There is a God above us, the Creator and Ruler of the world. Every man is made in the image and likeness of God; he is not a mere animal but a rational being with an immortal destiny, vested with a pattern of rights which no one can dare violate with impunity. Every man is a sacred being, more precious than the material world and all the riches thereof; he cannot be made a cog in the collective machinery of an all-powerful state, or a prop to support the white man's pride of race.

Political society is the instrument in the hands of a free people not alone to preserve law and order but also to take positive means to insure a reign of justice for all its citizens regardless of religion, race, or national origin. For all its serious faults, America has given her people the most equitable form of government in world history. Today we are passing through one of the great turning points of history, and whether men are to be free or slave depends to a large extent on the United States. Do we Americans have the dedication, the courage to think and to live in the spirit of the Declaration of Independence that "all men are created equal and endowed by their Creator with certain inalienable rights"? If so, it is time to prove it. And in the process we will prove to ourselves and the world that democracy is not an illusion.

Senator ERVIN. I have just this observation. We southerners get charged with many things. A lot of them are based on what can't be seen. There is one of them that can be seen which we have been charged with and in which I have been very much interested.

We are charged with responsibility for filibusters. We are charged with tying things up under present rule 22. I regret to have to admit that we are like the Gazook Society Jiggs joined.

We haven't got enough members to do that. Jiggs went over to Spain with Maggie, and he found out there was a mutual protective society of husbands over there and he joined it because each member of the society was sworn to come to the rescue of any husband member who got into a controversy of any kind with his wife.

In this cartoon Jiggs and Maggie were walking along the streets of Madrid, and Maggie took umbrage at something Jiggs had said so she began to beat him. Jiggs hollered, "Gazook". About a thousand members of the Gazook Society came running to Jiggs' rescue.

Maggie took an umbrella and laid them all out on the street. And the last picture in the cartoon showed Jiggs in the hospital all swathed in bandages.

He observed, "The idea behind this Gazook Society is pretty good, but it hasn't got enough members."

It takes 34 Senators to prevent cloture under existing rules of the Senate. Unfortunately for the country we have only 22 Senators from the South when none of us secede from the Confederacy.

Senator DOUGLAS. May I say I don't wish to get into a prolonged discussion on this point, but I have always noticed a close degree of cohesion of the Senators from South of the Mason-Dixon line, whereas those of us from other sections of the country are more dispersed.

I remember how Cortez took Mexico, I think, and Pizarro took Peru with very small groups, because they were united and the others were diffused.

Sometimes I think that this is what has happened after the late unpleasantness—that the South has taken possession of the legislative branch of both House and Senate. And I may say as individual gentlemen you are very fine.

Senator ERVIN. In other words, you love us individually but sometimes you deplore our actions collectively.

Senator DOUGLAS. I think the Senate is the South's revenge for Appomattox.

Senator HRUSKA. Mr. Chairman, may I ask the very distinguished Senator with reference to section 202, Senator Douglas, of the composite bill, we had some testimony here yesterday from the Attorney General in which he took exception to the inclusion of "sex" in the next to the last line of that first subparagraph in which the Commission is delegated to investigate allegations in writing that certain citizens of the United States are being deprived of their right to work, or that certain citizens in the United States are voting illegally or are being subject to unwarranted economic pressures by reason of their sex, color, race, religion, or national origin.

In his testimony the Attorney General testified that—

this provision is not germane to the purpose of the legislation and should be stricken.

I am just wondering what your thoughts and reaction might be to that, and what your concept of the purpose of this legislation is in terms of scope and degree.

Senator DOUGLAS. This may be masculine prejudice, Mr. Senator, but I would agree with Attorney General Brownell. I see no reason for the retention of "sex" in that section of the bill.

Senator HENNINGS. I might observe that this is a portion of the so-called Commission bill prepared and offered by the Attorney General of the United States and yesterday he did say that he thought that portion might be stricken.

Senator DOUGLAS. I would agree.

Senator HRUSKA. What is the purpose of this legislation in terms of scope? Now we speak of civil-rights legislation. Is there any evidence of that term that you know of that would be handy to sort of find out what is the scope of the legislation?

Senator DOUGLAS. I don't think we need to look behind the specific rights which are to be protected; namely, the right to take part in primary and general elections, equal protection of the laws under the Constitution, and the right to be free from lynching and other violations enunciated in the civil-rights laws.

I don't think we need look behind the specific rights which are to be protected in this bill.

Senator HRUSKA. But they are not very specific, Senator Douglas. For example, in section 202 when we find out what the Commission is supposed to investigate—paragraph 2, for example: study and collect information concerning economic, social, and legal developments constituting a denial of equal protection of the laws under the Constitution.

Now, that is not very specific. That is pretty general.

Turning then to section 301 under title 3, we find that the Department of Justice through this additional Assistant Attorney General would be called upon and concerned with—

all matters pertaining to the preservation and enforcement of civil rights secured by the Constitution and the laws of the United States.

I would say that is not specific. I would say that is very, very general.

I am interested in knowing what your particular concept of "civil rights" is.

Senator DOUGLAS. I remember the 14th amendment which provides that no State shall deprive any citizen of the equal protection of the laws.

I would say that is fundamental, and that when you have people denied such equal protection, whether in voting or in protection of person or other matters, that is a very specific denial of civil rights secured by the Constitution.

I don't think you can itemize this in every instance where it occurs, but that phrase that "no State shall deprive any citizen of the equal protection of the laws," I think, goes very far.

I think it is fundamental.

Senator HRUSKA. I am at a loss to understand why the inclusion of sex as a basis for abridgment of rights may apply here.

Senator DOUGLAS. May I say I didn't put sex into this bill, and it is perfectly all right if you want to desex it. I don't think that sex oppression is so common in this country as to justify legal action to prevent it.

I could make some flip comments and say that perhaps it is the male sex which needs protection, but I won't.

Senator HRUSKA. We have some testimony here with reference to the exclusion by the registrar of one of the Southern States of a very inordinately large percent of colored applicants for voting.

Now, had the basis of that exclusion been sex instead of color, I would imagine we would be very, very greatly concerned.

Senator DOUGLAS. No; I don't think so. I don't think the basis of exclusion is in fact sex discrimination.

Senator HRUSKA. Would you agree with me that if the basis for excluding those voters who applied as a people, who applied for the right to vote, if that particular exclusion by a registrar or any other registrar for sex instead of color, you would be just as concerned about their exclusion?

Senator DOUGLAS. You want to put sex back in them?

Senator HRUSKA. I am leading to this suggestion: If we are going to limit the purview of civil rights to color, race, religion, or national origin, that we are after all not doing justice to the other aspects of our economic and social activities, and I have particular reference to the proposed amendment of Senator Goldwater, in which he extends that protection to people who are denied those rights by reason of membership or nonmembership in a labor or trade organization.

Senator DOUGLAS. May I say on this question, as to whether you should include sex or not, that if this were 90 years ago, when Elizabeth Cady Stanton and Susan B. Anthony were apearing before Congress urging that the right to vote be granted to women as well as to Negroes, I might have agreed with it. But since then, women have been given the right to vote by the 19th amendment and have attained, I would say, almost full freedom, whereas Negroes have not. It is proper for the law to proceed to proximate abuse and not be compelled to deal with every possible abuse under the sun.

I believe that the Supreme Court in the 10 Hour Law for Women case, in 1915, in the opinion handed down by the then Chief Justice Hughes, said that it was possible for a legislature to deal with proximate issues, and that failure to include everyone within the purview of the law was not an evidence of discrimination.

If we find out that women are abused and that sex is a source of discrimination, Senator Hruska, I shall join you in trying to prevent any such discrimination. But at the moment I don't regard it as a real danger.

Senator HRUSKA. If that same were true, Senator Douglas, as to membership or nonmembership in a labor organization, would you go along with me on that kind of a proposition?

Senator DOUGLAS. On the right to work, I think the so-called right-to-work laws are "phonies." They give no one an absolute right to a job. They merely prohibit agreements with employers making union membership a condition of employment.

They are really "right-to-break-down-union-wages-and-standards" laws, or a "right-to-destroy-union-security" laws, or "spread-the-bitterness-of-a-union's-struggle-for-existence" laws, or "let-the-free-rider-enjoy-the-benefit-of-union-standards" laws.

Where these laws that you speak of are already in effect, unions are denied the protection to their very existence which union-shop clauses give against employers trying to dilute or whittle away their membership.

Where the turnover in employment is high, as in many casual industries, this is especially serious. Legitimate extension of union organization is also slowed or stopped. Reasonable pressures for higher wages and better working conditions are thwarted. Mature collective bargaining is set back to the earlier jungle period.

Senator HRUSKA. The thing that is still rather odd to me, and I am trying to get an answer to it, is that in the proposed bill we have mentioned here and we have provided here a study of the protection against unwarranted economic pressures by reason of sex, color, race, religion or national origin.

Now, in the 15th amendment, the only two of those which are mentioned are race and color. Why should there have been added to it the religion, national origin or sex, and not membership or nonmembership in an organization, of whatever kind it is, which might result in unwarranted economic pressure?

Senator DOUGLAS. Senator, I have just been saying over and over again that the inclusion of sex is not my child.

Now, national origin—I suppose that is an attempt to take account of the discriminations practiced widely against various immigrant groups in this country.

Senator HRUSKA. And religion?

Membership in particular——

Senator DOUGLAS. I think Americans feel that people should not be discriminated against because of their religion. I think, even though that may not be in the 14th or 15th amendments, that it is very deep in the structure of American life.

I may say I grew up in New England, and at an early age removed myself to the Middle West, for which I have always been very glad. But when I grew up in New England, there was tacit and almost open discrimination against Catholics. Now, I am happy to say, that has largely disappeared.

But it was a reality in New England at the time, and, although I am not a Catholic, I resented it. My family has resented it, and I think the overwhelming majority of Americans resent it. I am sure you resent it.

Senator HRUSKA. Yes; I am sure I would.

Senator HENNINGS. May I say to the Senator from Nebraska, I don't know whether he was here at the noon recess—the Attorney General will be here tomorrow, and is the author of this provision, and has suggested that the clause be stricken.

Senator Douglas has nothing to do with this phase.

Senator DOUGLAS. I think I would defend the inclusion of the national origin clause, and there are still many discriminations today against persons because of their religion.

Senator HENNINGS. The Attorney General will be here tomorrow.

Senator HRUSKA. I am just wondering from this very eminent and distinguished authority on the subject of civil rights, whether or not there is such a thing as a definition of civil rights which would include certain things and exclude others.

Senator DOUGLAS. I think the Constitution, Senator.

Senator HRUSKA. That is fine, but the only reference I see here is the 15th amendment. It doesn't go quite as broadly as this does.

In our legislation, do we want to take the 5 or 7 items or the 2 mentioned in the 15th amendment? What do we want to include?

Senator DOUGLAS. The 15th is the one protecting the right to vote, and I think that right should be made effective, which is the purpose as I understand it, of the provisions here. I regard those provisions in the bill to be the most important. The other matters given to the Commission are matters for study, not so much for legislation, and I think it is well to have broad terms of study.

But even there, these terms for study are limited by the provisions of the Constitution, and in this connection the 14th amendment, guaranteeing equal protection of the laws, would be controlling.

In any declarations of basic rights, I would include the preamble to the Declaration of Independence, which I think is a pretty noble document, written by a southerner. But that is not included.

Senator ERVIN. I might add that the southerner who wrote it, Thomas Jefferson, said in enumerating the reasons why the American Colonies should separate themselves from England, that the King of England had been denying their right to trial by jury, and that is the reason I do not want the Senator from Illinois to advocate denial of the right to trial by jury in this day and age, when that was one of the reasons this great southerner and great Democrat said we ought to separate ourselves from England.

Senator DOUGLAS. As I remember it, another reason for the separation was taxation without representation.

Senator ERVIN. That is right.

Senator DOUGLAS. And I would say that there is a considerable section of the population in the Southern States which is taxed—namely, the Negro population—but which is not represented because it does not have the effective right to vote. So I will appeal to this part of Jefferson's thoughts.

Senator ERVIN. I think the Senator is looking to the bottom of the iceberg which is not visible at this time.

I want to ask the Senator this: I was struck by the question that Senator Hruska asked you. He asked you if you didn't think that the Commission ought to investigate and determine whether economic discrimination was practiced against American citizens because of their membership or nonmembership in labor unions.

Senator DOUGLAS. You mean the so-called Goldwater amendment?

Senator ERVIN. Yes: in the bill that Senator Hruska read.

Senator DOUGLAS. Mr. Chairman, I would say that these matters are already more or less under investigation by the National Labor Relations Board and the Labor Committees of Congress. There are already agencies to study and act on those matters. They are almost continuously under review. But official national groups to study the rights, or denial of rights, of so-called minority groups in this country are lacking.

Senator ERVIN. Does not the Senator think that the right to work is, in a sense, a civil right?

Senator DOUGLAS. I don't want to have my answer about agencies dealing with real economic discriminations interpreted to mean that I approve of the right-to-work laws, because they are not really right-to-work laws.

Senator ERVIN. I am not asking that. I am asking, don't you think that the Congress ought to be equally concerned with the question whether people are discriminated against in their right to earn a living, that is, to eat their own bread in the sweat of their own brow,

because of their membership or nonmembership in a labor organization?

Senator DOUGLAS. May I say that if I were to assert an absolute right to work, I would have to follow the doctrines of Louis Blanc, the Frenchman, of 1848, because he said that if a person did not have work the government should furnish it to him.

I do not go as far as that. I should say government should try to help him, but that there is not an absolute right. We should try to further the opportunity to work. But I agree that many discriminations between people tend to be obnoxious and have to be justified on other grounds if they are to be carried into effect.

Senator ERVIN. Don't you think that the Government ought to be concerned with the question whether or not discrimination is practiced against men who have to earn their livelihood by the sweat of their own brow, by reason of their membership or nonmembership in labor organizations?

Senator DOUGLAS. Yes. I was not then a Member of Congress, but I supported the Wagner Act, and have often defended it, and for 7 years I sat on the Labor Committee. We were constantly going into that question.

Senator ERVIN. This bill proposes to set up a bipartisan commission. Don't you believe that this bipartisan commission, if it is set up, might well investigate that matter?

Senator DOUGLAS. I would say that we already have adequate bodies to go into that subject. This issue would be a diversionary thing.

I don't impute motives, but I think the effect would be diversionary. It would get our attention off the issue.

Senator ERVIN. You say we already have committees or bodies that are empowered to investigate that field. We already have congressional committees that have the power to investigate the civil-rights fields and all of its aspects, don't we?

Senator DOUGLAS. Yes, sir.

Senator ERVIN. Why do you favor the appointment of a commission to be appointed by the President to investigate these matters rather than permitting congressional committees to make an investigation?

Senator DOUGLAS. Senator, do you want a blunt but truthful answer to that?

Senator ERVIN. Yes, sir. That is the only kind I want to any of my questions.

Senator DOUGLAS. I am afraid of the filibustering tactics of my friends from the South, if we were to try to set up a congressional committee.

Senator ERVIN. You don't think that we will be able to filibuster after the Presidential Commission makes its report?

Senator DOUGLAS. I don't think that the possibility of filibustering a bill is going to be taken away, no.

Senator ERVIN. I would like to know whether you think that the Government should investigate the question whether people are suffering discrimination on account of their membership or nonmembership in labor organizations.

Senator DOUGLAS. I think that is a very appropriate subject, and I would be perfectly willing to see a committee of Congress or a committee appointed by the President consider that matter.

But I don't think that it should be allowed to sidetrack this commission. This Commission has enough to do in dealing with discrimination on the basis of color, race, religion, or national origin.

Senator ERVIN. Do you think the right to belong or refuse to belong to a union is a civil right?

Senator DOUGLAS. That is a very difficult question. I would say that if a person has deep religious and conscientious scruples against membership in a union, he probably should not be compelled to join a union.

But I would want to make certain that those scruples were real and deep and sincere.

Senator ERVIN. If they did exist, you would not favor laws which would prohibit agreements between unions and employers to deprive him of the right to work?

Senator DOUGLAS. May I say that any such assertion of deep religious or personal scruples should not be used as a pretext for freeing the individual from the obligations which would go with industrial citizenship. They should not be able to claim privileges given to them by the power of the union without making at least a financial contribution.

Senator ERVIN. In other words, that would be equivalent to paying taxes to something other than a governmental body, wouldn't it?

Senator DOUGLAS. I think this whole relationship between voluntary and Government bodies is very difficult. In the dealing with conscientious objectors to military service, we permit such exemptions if clearly demonstrated, but we insist that it shall be accompanied by corresponding service, that it shall not be used as a pretext.

Senator HENNINGS. Senator, is there any stronger union in the world than the lawyer's union, the bar association or the integrated bar of several States?

Senator DOUGLAS. Now, when you come to the question of the integrated bar——

Senator HENNINGS. We are members, and we have to pay dues or we can't practice law.

Senator DOUGLAS. I want to thank the chairman for coming to my rescue. I had forgotten to mention it.

Senator HENNINGS. I am pointing out this is a privilege adhering to the practice of law, and indeed a requirement.

Senator DOUGLAS. Yes.

Senator HENNINGS. You cannot practice law in most States of the Union without being a member of the integrated bar or of one of at least several associations, so it is indeed a union.

I am not going to be impolite enough to ask the Senator from North Carolina whether he belongs to that or not.

Senator ERVIN. As my distinguished friend from Missouri knows, lawyers are officers of the court. They are in the discharge of a profession clothed with a public interest, and they utilize public property such as courthouses and courts in the discharge of their functions.

That cannot be said of people manufacturing automobiles.

Senator HENNINGS. As my distinguished friend from North Carolina knows, there are many lawyers who probably don't know where the courthouse is. They spend most of their time practicing law for corporations and stay within their offices and do not use public property.

They pay rent in an office and practice indeed more profitably generally and lucratively than most lawyers who go to the courthouse.

Senator ERVIN. Yes; but to save time, they are exercising a function which is clothed with the public interest and which requires a specific kind of knowledge, and therefore the State has the right to regulate them.

Each one in those State bars has the right to believe in anything he wants to or state anything he wants to, regardless of the majority.

Senator DOUGLAS. Senator, I hope you won't think me flippant in quoting a line from Browning. "All service ranks with God."

Senator ERVIN. I agree with you perfectly.

I think all honest toil is ennobling. I appreciate your quotation since it is to that effect.

Senator HENNINGS. Thank you very much, Senator Douglas.

Senator DOUGLAS. Thank you, gentlemen.

Senator HENNINGS. Those matters that you wish to file with the committee will be received at any time at your convenience without objection.

I understand that although the hour is drawing close to the usual time for adjournment, that the junior Senator from Pennsylvania, Senator Joseph S. Clark, Jr., is the next witness on the list and is here prepared to give us the benefit of his views. We welcome you to the committee, Senator Clark, and will be glad to hear from you in any manner that you wish to proceed.

STATEMENT OF HON. JOSEPH S. CLARK, UNITED STATES SENATOR FROM THE STATE OF PENNSYLVANIA

Senator CLARK. Thank you, Mr. Chairman. I appear before your committee with some difference, particularly because of the recent date at which I was privileged to become a Member of the Senate.

But the problem which is before your subcommittee is a matter in which the people of my Commonwealth are very deeply interested, and with respect to which they have strong views.

I felt, therefore, that I had an obligation to place those views before the committee. I shall endeavor to be very brief indeed.

I listened with great interest to the statement of the distinguished Senator from Mississippi, and I join with Senator Douglas in his complimentary remarks about the intelligent and good tempered presentation of views which he made, views for which indeed I have the deepest respect, although I find myself unhappily unable to concur in them.

I perhaps have a little more understanding of those views than some of the rest of us in the North, in that I am myself half southern. I presently own property in Louisiana. My grandfather was wounded in the Confederate Army at the Battle of Shiloh, and I spent a good deal of my early life on my mother's and grandfather's property in Louisiana.

I can't believe, Mr. Chairman, that the effect of this legislation will be as disastrous as has been predicted. On the contrary, I would hope that the legislation would, in the end, strengthen the hands of those moderate elements in the South on whom all real progress in the field of civil rights eventually depends.

Any attempt at ultimate forceful solutions in my judgment are inevitably going to fail. I do not think that the legislation presently before this committee would have that end result.

I would also like to make it clear, Mr. Chairman, that we in Pennsylvania are not without sin in this regard. There is discrimination in Pennsylvania. We are not giving our minority groups the full first-class citizenship to which they are entitled, and I would certainly be the last——

Senator HENNINGS. I might say, if the Senator will permit an interruption, I know that my own State, a border State, is certainly not without sin in that respect, and I would like to say too, that all of my forebears on both sides were Confederates and in the Confederate Army, and indeed some of them slaveholders, so I know a little bit about this subject.

I don't come here nor do any of us, with any prejudice in this matter, I hope. It is a matter of undertaking to bring out on the anvil of our discussion some reasoned, rational, proper view of the need, or indeed the lack of need, for this legislation.

I hope that we may be considered as progressing objectively and without prejudice or rancor as to any witness.

Senator CLARK. Mr. Chairman, I would like, if I might, to make four points:

The legislation before this committee, varied though it is, all represents an effort to make some progress in this controversial field of civil rights.

A total of 50 Senators have sponsored or cosponsored bills presently before this committee. They come from 32 of the 48 States.

I think it is common knowledge that there are a number of Senators who, while they did not sponsor or cosponsor any one of these several bills, are nonetheless prepared to vote in support of civil rights legislation, should it come to the floor of the Senate.

I make this point because in my judgment, Mr. Chairman, the support of this legislation among our colleagues represents an overwhelming sentiment in support of civil rights legislation, a support which I think is buttressed by what I am sure we all believe will happen to similar legislation in the House of Representatives, which is said, perhaps unjustly, to be closer to the people than we are in the upper Chamber.

My second point is that in my judgment, Mr. Chairman, this popular sentiment is neither transient nor of recent origin. It represents a deeply rooted and a long-felt national conviction.

That conviction, I submit, is based on fundamental ethical concepts and on long-standing principles of freedom and justice and equity which stem from ancient principles of Anglo-Saxon law.

My third point is that this conviction is not confined to the United States, that it extends to practically every country in the world outside of the Iron Curtain, except South Africa. Our failure as a Nation to protect the basic civil rights of all American citizens, without regard to race or color, is presently crippling the efforts of our Government to create that atmosphere of mutual respect and confidence throughout the free world on which our very national security and our defense against international communism both depend.

My fourth point is that under these circumstances, Mr. Chairman, I suggest with a great deal of deference and with some diffidence, that

the Senate of the United States itself as an institution of free democratic Government may well be on trial before not only the American people but the entire free world. The issue before us is no longer whether the Senate serves a useful role in protecting a minority against the tyranny of a popular majority, but whether the Senate can respond to one of the most critical challenges of our times—or whether its procedures can adjust themselves to meet necessary and essential change.

Mr. Chairman, I was one of the cosponsors of Senator Humphrey's bills which are brought together in S. 510. Those bills, in my judgment, meet the challenge of which I speak in a comprehensive and constitutional manner. Earlier testimony before this subcommittee defends the provisions of the various titles of that bill so adequately that I would not want to burden the committee with a repetition which I am sure would not be as adequate.

I would, however, like to associate myself with the testimony of Senator Humphrey, of former Senator Herbert Lehman, and of Senator Douglas with respect to those bills, and to point out that I, too, feel that this is an area where we should endeavor to find some middle ground in which we can agree.

Thus, I would hope that if S. 510 were too drastic for either the committee or the Senate, we might agree on the subcommittee print. I would hope that we would not have to go to the point of accepting S. 83. But any progress which we were able to make in this session of the Congress would be something which the people of my Commonwealth are deeply interested in, and I think that they represent the predominant and overwhelming sentiment of a vast majority of the people of the United States.

Senator HENNINGS. Thank you very much, Senator Clark.

Senator Ervin, do you care to interrogate Senator Clark?

Senator ERVIN. Senator, when a person is charged with contempt of court consisting of an alleged past disobedience of an injunction, do you think they ought to have one method of trying that contempt for labor and another method of trying it for other people?

Senator CLARK. No, sir, I don't, Senator Ervin. I feel that the whole problem of punishment for contempt could well get a very careful going over in the Congress. Perhaps I am not a very good lawyer any more—maybe I never was—I haven't been practicing for 6 or 7 years now, but I have always been of the view that, as you said a little while ago, power does tend to corrupt, as Lord Acton said, and absolute power corrupts absolutely.

And I should be happy to see an earnest effort made for a uniform statute dealing with the subject of contempt of court.

I think I share your views on that subject.

Senator ERVIN. I appreciate that. As a lawyer, I have always felt that all people ought to be fed out of the same legal spoon. We ought not to try one man for contempt of court by one rule and another man by another rule.

Senator CLARK. I think, Senator, you would agree with me it ought to apply also to contempt of Congress.

Senator ERVIN. Yes. A man charged with contempt of Congress should be tried by a jury. I believe in jury trials because juries come from the people, and as long as you have juries, you have the people engaged in the administration of justice.

And I think it is healthy for the people and also healthy for the cause of justice. I do have the opinion that this bill ought to be amended to conform the bill to the general statute relating to criminal contempts and the special statute about labor, so that any person who is charged with contempt for the purpose of punishment rather than for the purpose of enforcement should not be punished for contempt of court until the facts constituting the contempt have been established by the verdict of a jury after a trial on the merits.

Senator CLARK. Senator, I am not 100 percent sure that I would agree with you all the way on that, but I will say this, that whatever the treatment of contempt should be, it should be uniform and not one rule of contempt in civil-rights cases and another in labor cases, and a third in cases of contempt of Congress.

Senator ERVIN. But under this thing we would certainly have differences, because under the existing law concerning civil rights, a criminal contempt, that is, where the violation of the injunction is also a crime, is punishable only after trial by jury.

Senator CLARK. As the Senator knows, there is also civil contempt.

Senator ERVIN. Of course, civil contempt is a contempt proceeding in which the object is to enforce the judgment of the court rather than the object of punishing a man for a past violation, and I would have to admit that I think civil contempts would have to be punished by the court without a jury trial.

In that case I wouldn't advocate it.

Senator CLARK. I think, Senator, I should make it very clear indeed that I don't consider myself an expert on this subject.

Senator ERVIN. That is all.

Senator HENNINGS. Thank you, Senator.

Senator Hruska.

Senator HRUSKA. I have no questions.

Senator HENNINGS. Thank you very much, Senator Clark, for giving us the benefit of your testimony and your views on this very important subject. We appreciate your coming.

The distinguished Senator from Georgia, Senator Talmadge. May I ask one question before we proceed, if we are to proceed. We realize you have been very patient today. The committee has tried to be patient in hearing the testimony since early this morning.

This is the customary hour for adjourning until tomorrow morning. As the Senator knows, we are going to have a session at 10 o'clock tomorrow when the Attorney General will return.

I think the other members of the committee will join me in wanting to accommodate the Senator from Georgia. Could the Senator give us any idea of the length of time that he may consume in making his principal statement?

Senator TALMADGE. Approximately 20 minutes, Mr. Chairman.

Senator HENNINGS. I am sure we would like very much to accommodate the Senator. I assume, though, that there will be some further colloquy.

Senator TALMADGE. I don't want to unduly burden the committee. If you would prefer, I will come back tomorrow morning.

Senator HENNINGS. We do have business in our office and many things that have accumulated, as the Senator knows, and this is the customary time for adjourning for the evening.

If the Senator has no commitments tomorrow — —

Senator TALMADGE. There are no objections on my part, Mr. Chairman. I do have a luncheon engagement. If you will release me by 12:30, it will be entirely agreeable with me to return tomorrow.

Senator HENNINGS. I appreciate the Senator's graciousness as I know we all do.

At this point in the report there will be incorporated the notice of public hearing on proposed civil rights legislation by Senate Judiciary Subcommittee on Constitutional Rights as printed in the Congressional Record of the Senate under date of February 4, 1957.

Also a listing of the members of the Committee on the Judiciary of the United States Senate, 85th Congress, 1st session; a listing of the members of the Subcommittee on Constitutional Rights of the Committee on the Judiciary of the United States Senate, 85th Congress, 1st session; and a list of civil-rights bills referred to the Constitutional Rights Subcommittee along with copies of the bills.

There will also appear in the record at this point a statement submitted by the Honorable Hubert H. Humphrey, United States Senator from Minnesota.

I have for the record a statement submitted by the Honorable Andrew J. Biemiller, former Member of Congress, and presently the director of the department of legislation, American Federation of Labor and Congress of Industrial Organizations.

(The documents above referred to are as follows:)

[Congressional Record, February 4, 1957]

NOTICE OF PUBLIC HEARINGS ON PROPOSED CIVIL RIGHTS LEGISLATION BY SENATE JUDICIARY SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS

Mr. HENNINGS. Mr. President, as Chairman of the Subcommittee on Constitutional Rights of the Committee on the Judiciary of the United States Senate, I wish to announce that public hearings will commence at 10 a. m. on Thursday, February 14, 1957, in the Senate Office Building—the room number to be announced later—on all pending civil rights legislation which has been referred to the subcommittee by the full committee.

This proposed legislation also includes a composite bill, in subcommittee print form, which I have had prepared, embodying the provisions of the 4 measures which have been introduced in this session by the senior Senator from North Dakota [Mr. LANGER], the junior Senator from Wyoming [Mr. O'MAHONEY], and myself, corresponding to the 4 bills reported favorably by the subcommittee to the full committee in the 84th Congress, together with provisions of S. 83, a bill sponsored by all the minority members of the Committee on the Judiciary and corresponding to the measure which passed the other house in the 84th Congress.

Any Members of the Senate knowing of persons who desire to file statements for the record or appear to testify in person are urged to communicate directly with the office of the Subcommittee on Constitutional Rights: Government code 151—Republic 7-7500—extension 2363.

FEBRUARY 14, 1957.

COMMITTEE ON THE JUDICIARY, UNITED STATES SENATE

85TH CONGRESS, 1ST SESSION

JAMES O. EASTLAND, Mississippi, *Chairman*

ESTES KEFAUVER, Tennessee
OLIN D. JOHNSTON, South Carolina
THOMAS C. HENNINGS, Jr., Missouri
JOHN L. McCLELLAN, Arkansas
JOSEPH C. O'MAHONEY, Wyoming
MATTHEW M. NEELY, West Virginia
SAM J. ERVIN, Jr., North Carolina
ALEXANDER WILEY, Wisconsin
WILLIAM LANGER, North Dakota
WILLIAM E. JENNER, Indiana
ARTHUR V. WATKINS, Utah
EVERETT McKINLEY DIRKSEN, Illinois
JOHN MARSHALL BUTLER, Maryland
ROMAN L. HRUSKA, Nebraska

FEBRUARY 14, 1957.

SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS OF THE COMMITTEE ON THE JUDICIARY, UNITED STATES SENATE

85TH CONGRESS, 1ST SESSION

THOMAS C. HENNINGS, JR., Missouri, *Chairman*

JOSEPH C. O'MAHONEY, Wyoming
SAM J. ERVIN, JR., North Carolina
OLIN D. JOHNSTON, South Carolina
WILLIAM LANGER, North Dakota
ARTHUR V. WATKINS, Utah
ROMAN L. HRUSKA, Nebraska

FEBRUARY 14, 1957.

CIVIL RIGHTS BILLS REFERRED TO CONSTITUTIONAL RIGHTS SUBCOMMITTEE

From the office of United States Senator Thomas C. Hennings, Jr. (Democrat, Missouri)

S. 83: Four-part bill ("the administration proposals"); would establish Commission on Civil Rights, provide for additional Assistant Attorney General, provide civil remedies in civil-rights situations, including voting process. (Introduced by Dirksen et al.)

S. 83 (Amendment): Includes as duties of Commission the investigation of written allegations that citizens are being deprived of right to obtain employment or are being subjected to pressure because of membership or nonmembership in a labor or trade organization. (Introduced by Goldwater.)

S. 427: To protect the right to political participation. (Introduced by Hennings, O'Mahoney, and Langer.)

S. 428: Provides additional Attorney General, specifically in charge of a Civil Rights Division in the Justice Department and strengthens the FBI to deal with civil-rights cases. (Introduced by Hennings, O'Mahoney, and Langer.)

S. 429: To declare certain rights of all persons within the jurisdiction of the United States, and for the protection of such persons from lynching and mob violence. (Introduced by Hennings, O'Mahoney, and Langer.)

S. 468: To extend to uniformed members of the Armed Forces the same protection against bodily attack as is now granted to personnel of the Coast Guard. (Introduced by Hennings, O'Mahoney, and Langer.)

S. 500: To protect the right to political participation. (Introduced by Humphrey et al.)

S. 501: To establish a Commission on Civil Rights in the executive branch of the Government. (Introduced by Humphrey et al.)

S. 502: To reorganize the Department of Justice for the protection of civil rights. (Introduced by Humphrey et al.)

S. 504: To extend to uniformed members of the Armed Forces the same protection against bodily attack as is now granted to personnel of the Coast Guard. (Introduced by Humphrey et al.)

S. 505: To declare certain rights of all persons within the jurisdiction of the United States, and for the protection of such persons from lynching, and for other purposes. (Introduced by Humphrey et al.)

S. 508: To amend and supplement existing civil-rights statutes. (Introduced by Humphrey et al.)

S. 509: To strengthen the laws relating to convict labor, peonage, slavery, and involuntary servitude. (Introduced by Humphrey et al.)

S. 510: Omnibus human rights bill; includes provisions of S. 500 to 509, inclusive, and also of Senate Concurrent Resolution 5; to secure, protect and strengthen the civil rights accruing to individuals under the Constitution and laws of the United States. (Introduced by Humphrey et al.)

Senate Concurrent Resolution 5: Establishment of Joint Committee on Civil Rights in Senate and House. (Introduced by Humphrey et al.)

Subcommittee print: Combination of noncondicting provisions of S. 83 (Dirksen et al.) together with those of S. 427, S. 428, S. 429, and S. 468 (Hennings, O'Mahoney, and Langer); the last four bills correspond to those reported favorably in the 84th Congress by this subcommittee. (Prepared at the direction of Subcommittee Chairman Hennings.)

[S. 83, 85th 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 may be cited as the "Civil Rights Act of 1957".

PART I—ESTABLISHMENT OF THE COMMISSION ON CIVIL RIGHTS

SEC. 101. (a) There is created in the executive branch of the Government a Commission on Civil Rights (hereinafter called the "Commission").

(b) The Commission shall be composed of six members who shall be appointed by the President by and with the advice and consent of the Senate. Not more than three of the members shall at any one time be of the same political party.

(c) 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 that office.

(d) Any vacancy in the Commission shall not affect its powers and shall be filled in the same manner, and subject to the same limitation with respect to party affiliations as the original appointment was made.

(e) Four members of the Commission shall constitute a quorum.

RULES OF PROCEDURE

SUBCOMMITTEES, MEETINGS, INVESTIGATIONS, AND REPORTS

SEC. 102. (a) Subcommittees, as required, shall be appointed by the Commission Chairman subject to the approval of the majority of the Commission and shall ordinarily consist of no less than three members. Subcommittees of less than three members may be designated by the Chairman, subject to the approval of the majority of the Commission.

(b) Commission meetings shall be called only upon a minimum of sixteen hours' written notice to the office of each Commission member. This provision may be waived by the assent of the majority of the members of the Commission.

(c) Commission hearings (whether public or in executive session) and Commission investigations shall be scheduled and conducted only upon the majority vote of the Commission in a meeting at which a majority of the Commission is actually present.

(d) A resolution or motion scheduling hearings or ordering a particular investigation shall state clearly and with particularity the subject thereof, which resolution may be amended only upon majority vote of the Commission in a meeting at which a majority of the Commission is actually present.

(e) The Chairman or a member shall consult with appropriate Federal law enforcement agencies with respect to any phase of an investigation which may result in evidence exposing the commission of Federal crimes, and the results of such consultation shall be reported to the Commission before witnesses are called to testify therein.

(f) No Commission report shall be issued unless a draft of such report is submitted to the office of each Commission member twenty-four hours in advance of the meeting at which it is to be considered and is adopted at a meeting at which a majority is actually present.

(g) No testimony given in executive session or part or summary thereof shall be released or disclosed orally or in writing by a member or employee of the Commission without the authorization of the Commission by majority vote at a meeting at which a majority of members is present. No Commission or staff report or news release or statement based upon evidence or testimony adversely affecting a person shall be released or disclosed by the Commission or any member orally or in writing unless such evidence or testimony and the complete evidence or testimony offered in rebuttal thereto, if any, is published prior to or simultaneously with the issuance of the report, or news release, or statement.

(h) The rule as to the secrecy of executive sessions as set forth in subsection (g) of this section shall be applicable to members and employees of the Commission for a reasonable period following an executive session until the Commission has had a reasonable time to conclude the pertinent investigation and hearings and to issue a report; subject, however, to any decision by a Commission majority for prior release in the manner set forth in subsection (g).

HEARINGS

(i) Witnesses at Commission hearings (whether public or in executive session) shall have the right to be accompanied by counsel, of their own choosing, who shall have the right to advise witnesses of their rights and to make brief objections to the relevancy of questions and to procedure.

(j) Rulings on motions or objections shall be made by the member presiding, subject to appeals to the members present on motion of a member.

(k) At least twenty four hours prior to his testifying a witness shall be given a copy of that portion of the motion or resolution scheduling the hearing stating the subject of the hearing; at the same time he shall be given a statement of the subject matters about which he is to be interrogated.

(l) It shall be the policy of the Commission that only evidence and testimony which is reliable and of probative value shall be received and considered by the Commission. The privileged character of communication between clergymen and parishioner, doctor and patient, lawyer and client, and husband and wife shall be scrupulously observed.

(m) No testimony shall be taken in executive session unless at least two members of the Commission are present.

(n) Every witness shall have the right to make complete and brief answers to questions and to make concise explanations of such answers.

(o) Every witness who testifies in a hearing shall have a right to make an oral statement and to file a sworn statement which shall be made a part of the transcript of such hearings, but such oral or written statement shall be relevant to the subject of the hearings.

(p) A stenographic verbatim transcript shall be made of all Commission hearings. Copies of such transcript, so far as practicable, shall be available for inspection or purchase at regularly prescribed rates from the official reporter by any witness or person mentioned in a public hearing. Any witness and his counsel shall have the right to inspect only the complete transcript of his own testimony in executive session.

RIGHTS OF PERSONS ADVERSELY AFFECTED BY TESTIMONY

(q) A person shall be considered to be adversely affected by evidence or testimony of a witness if the Commission determines that: (i) the evidence or testimony would constitute libel or slander if not presented before the Commission or (ii) the evidence or testimony alleges crime or misconduct or tends to disgrace or otherwise to expose the person to public contempt, hatred, or scorn.

(r) Insofar as practicable, any person whose activities are the subject of investigation by the Commission, or about whom adverse information is proposed to be presented at a public hearing of the Commission, shall be fully advised by the Commission as to the matters into which the Commission proposes to inquire and the adverse material which is proposed to be presented. Insofar as practicable, all material reflecting adversely on the character or reputation of any individual which is proposed to be presented at a public hearing of the Commission shall be first reviewed in executive session to determine its reliability and probative value and shall not be presented at a public hearing except pursuant to majority vote of the Commission.

(s) If a person is adversely affected by evidence or testimony given in a public hearing, that person shall have the right: (i) to appear and testify or file a sworn statement in his own behalf, (ii) to have the adverse witness recalled upon application made within thirty days after introduction of such evidence or determination of the adverse witness' testimony, (iii) to be represented by counsel as heretofore provided, (iv) to cross-examine (in person or by counsel) such adverse witness, and (v), subject to the discretion of the Commission, to obtain the issuance by the Commission of subpenas for witnesses, documents, and other evidence in his defense. Such opportunity for rebuttal shall be afforded promptly and, so far as practicable, such hearing shall be conducted at the same place and under the same circumstances as the hearing at which adverse testimony was presented.

Cross-examination shall be limited to one hour for each witness, unless the Commission by majority vote extends the time for each witness or group of witnesses.

(t) If a person is adversely affected by evidence or testimony given in executive session or by material in the Commission files or records, and if public release of such evidence, testimony, or material is contemplated, such person shall have,

prior to the public release of such evidence or testimony or material or any disclosure of or comment upon it by members of the Commission or Commission staff or taking of similar evidence or testimony in a public hearing, the rights heretofore conferred and the right to inspect at least as much of the evidence or testimony of the adverse witness or material as will be made public or the subject of a public hearing.

(u) Any witness (except a member of the press who testifies in his professional capacity) who gives testimony before the Commission in an open hearing which reflects adversely on the character or reputation of another person may be required by the Commission to disclose his sources of information, unless to do so would endanger the national security.

SUBPENAS

(v) Subpenas shall be issued by the Chairman of the Commission only upon written notice to all members of the Commission, with a statement as to the identity of the witness or material and their relevancy to the investigation or hearing already authorized. Upon the request of any member of the Commission, the question of whether a subpena shall be issued or remain in force if already issued shall be decided by a majority vote.

COMMISSION STAFF

(w) The composition and selection of, and changes in, the professional and clerical staff of the Commission shall be subject to the vote of a majority of the members of the Commission.

TELEVISION AND OTHER MEANS OF COMMUNICATION AND REPORTING

(x) Subject to the physical limitations of the hearing room and consideration of the physical comfort of Commission members, staff, and witnesses, equal access for coverage of the hearings shall be provided to the various means of communication, including newspapers, magazines, radio, newsreel, and television. It shall be the duty of the Commission Chairman to see that the various communication devices and instruments do not unreasonably distract, harass, or confuse the witness or interfere with his presentation.

(y) No witness shall be televised, filmed, or photographed during the hearing if he objects on the ground of distraction, harassment, or physical handicap.

COMPENSATION OF MEMBERS OF THE COMMISSION

SEC. 103. (a) Each member of the Commission who is not otherwise in the service of the Government of the United States shall receive the sum of $50 per day for each day spent in the work of the Commission, shall be reimbursed for actual and necessary travel expenses, and shall receive a per diem allowance of $12 in lieu of actual expenses for subsistence, inclusive of fees or tips to porters and stewards.

(b) Each member of the Commission who is otherwise in the service of the Government of the United States shall serve without compensation in addition to that received for such other service, but while engaged in the work of the Commission shall be reimbursed for actual and necessary travel expenses, and shall receive a per diem allowance of $12 in lieu of actual expenses for subsistence, inclusive of fees or tips to porters and stewards.

DUTIES OF THE COMMISSION

SEC. 104. (a) The Commission shall—

(1) investigate allegations in writing that certain citizens of the United States are being deprived of their right to vote or that certain persons in the United States are voting illegally or are being subjected to unwarranted economic pressures by reason of their sex, color, race, religion, or national origin;

(2) study and collect information concerning economic, social, and legal developments constituting a denial of equal protection of the laws under the Constitution; and

(3) appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution.

(b) The Commission shall submit interim reports to the President at such times as either the Commission or the President shall deem desirable, and shall submit to the President a final and comprehensive report of its activities, findings, and recommendations not later than two years from the date of the enactment of this statute.

(c) Sixty days after the submission of its final report and recommendations the Commission shall cease to exist.

POWERS OF THE COMMISSION

SEC. 105. (a) Within the limitations of its appropriations, the Commission may appoint a full-time staff director and such other personnel as it deems advisable, in accordance with the civil service and classification laws, and may procure services as authorized by section 15 of the Act of August 2, 1946 (60 Stat. 810; 5 U. S. C. 55a) but at rates for individuals not in excess of $50 per diem.

(b) The Commission may accept and utilize services of voluntary and uncompensated personnel and 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 $12).

(c) 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.

(d) All Federal agencies shall cooperate fully with the Commission to the end that it may effectively carry out its functions and duties.

(e) The Commission, or on the authorization of the Commission any subcommittee of two or more members, may, for the purpose of carrying out the provisions of this Act, hold such hearings and act at such times and places as the Commission or such authorized subcommittee may deem advisable. Subpenas for the attendance and testimony of witnesses and/or the production of written or other matter may be issued over the signature of the Chairman of the Commission or of such subcommittee, and may be served by any person designated by such Chairman: *Provided*, That notwithstanding anything to the contrary in this Act contained, the Commission shall not constitute or appoint any subcommittee of less than two members, one member to be from each political party affiliation.

(f) In case of contumacy or refusal to obey a subpena, any district court of the United States or the United States court of any Territory or possession, or the District Court of the United States for the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Attorney General of the United States shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission or a subcommittee thereof, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

APPROPRIATIONS

SEC. 106. There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, so much as may be necessary to carry out the provisions of this Act.

PART II—TO PROVIDE FOR AN ADDITIONAL ASSISTANT ATTORNEY GENERAL

SEC. 111. There shall be in the Department of Justice one additional Assistant Attorney General, who shall be appointed by the President, by and with the advice and consent of the Senate, who shall assist the Attorney General in the performance of his duties, and who shall receive compensation at the rate prescribed by law for other Assistant Attorneys General.

PART III—TO STRENGTHEN THE CIVIL RIGHTS STATUTES, AND FOR OTHER PURPOSES

SEC. 121. Section 1980 of the Revised Statutes (42 U. S. C. 1985), is amended by adding thereto two paragraphs to be designated "Fourth" and "Fifth" and to read as follows:

"Fourth. Whenever any persons have engaged or are about to engage in any acts or practices which would give rise to a cause of action pursuant to paragraphs First, Second, or Third, the Attorney General may institute for the United States, or in the name of the United States but for the benefit of the real party in interest, a civil action or other proper proceeding for redress, or preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order.

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

SEC. 122. Section 1343 of title 28, United States Code, is amended as follows:

(a) Amend the catch line of said section to read,

"§ 1343. Civil Rights and elective franchise"

(b) Delete the period at the end of paragraph (3) and insert in lieu thereof a semicolon.

(c) Add a paragraph as follows:

"(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote."

PART IV—TO PROVIDE MEANS OF FURTHER SECURING AND PROTECTING THE RIGHT TO VOTE

SEC. 131. Section 2004 of the Revised Statutes (42 U. S. C. 1971), is amended as follows:

(a) Amend the catch line of said section to read, "Voting rights".

(b) Designate its present text with the subsection symbol "(a)".

(c) Add, immediately following the present text, three new subsections to read as follows:

"(b) No person, whether acting under color of law or otherwise, shall intimidate, threaten, coerce, or attempt 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 or possessions, at any general, special, or primary election held solely or in part for the purpose of selecting or electing any such candidate.

"(c) Whenever any person has engaged or is about to engage in any act or practice which would deprive any other person of any right or privilege secured by subsection (a) or (b), the Attorney General may institute for the United States, or in the name of the United States but for the benefit of the real party in interest, a civil action or other proper proceeding for redress, or preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order. In any proceeding hereunder the United States shall be liable for costs the same as a private person.

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

[S. 83, 85th Cong., 1st sess.]

AMENDMENT intended to be proposed by Mr. GOLDWATER to the bill (S. 83) to provide means of further securing and protecting the civil rights of persons within the jurisdiction of the United States, viz: On page 11 strike out lines 3 through 8 and insert the following:

(1) investigate written allegations that certain citizens of the United States are being deprived of their rights to vote or obtain employment, or are being subjected to unwarranted economic pressures, by reasons of their color, race, religion, national origin, or membership or nonmembership in a labor or trade organization;

[S. 427, 85th Cong., 1st sess.]

A BILL To protect the right to political participation

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title 18, United States Code, section 594, is amended to read as follows:

SEC. 594. 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 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. 2. Section 2004 of the Revised Statutes (42 U. S. C. 1971) 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 (42 U. S. C. 1983), and other applicable provisions of law."

SEC. 3. In addition to the criminal penalties provided, any person or persons violating the provisions of the first section of this Act 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 this Act 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.

SEC. 4. 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.

[S. 428, 85th Cong., 1st sess.]

A BILL To reorganize the Department of Justice for the protection of civil rights

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That 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. 102. 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.

[S. 429, 85th Cong., 1st sess.]

A BILL To declare certain rights of all persons within the jurisdiction of the United States, and for the protection of such 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."

PURPOSES

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

(a) To insure the most 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 the republican form of government of the several States from the lawless conduct of persons threatening to destroy the systems of public criminal justice therein and threatening to frustrate the functioning thereof through duly constituted officials.

RIGHT TO BE FREE OF LYNCHING

SEC. 3. It is hereby declared that the right of due process of law as guaranteed by the Constitution to all persons who are within the jurisdiction of the United States whether or not citizens thereof includes a prohibition against lynching. As to citizens of the United States, such right additionally accrues by virtue of such citizenship. Such right is in addition to the same or any similar right or rights they may have as persons within the jurisdiction of, or as citizens of, the several States, the District of Columbia, the Territories, possessions, or other areas within the exclusive jurisdiction of the United States.

DEFINITIONS

SEC. 4 (a) Whenever two or more persons shall knowingly in concert (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, religion, or for any other reason which denies due process of law, (b) 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 persons 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. 4. Any person, whether or not a governmental officer or employee, (a) who is a member of a lynch mob or (b) who knowingly instigates, incites, organizes, aids, abets, or commits a lynching by any means whatsoever, shall, upon conviction, be fined not more than $1,000, or imprisoned not more than one year, or both: *Provided, however*, That where such lynching results in death or maiming or other serious physical or mental injury, or in damage to property, constituting a felony under applicable State, District of Columbia, Territorial, or similar law, any such person shall, upon conviction, be fined not more than $10,000, or imprisoned not more than twenty years, or both. A felony, for purposes of this section, shall be deemed an offense which, under applicable State, District of Columbia, Territorial, or similar law, is punishable by imprisonment for more than one year.

PUNISHMENT FOR KNOWING FAILURE TO PREVENT OR PUNISH LYNCHING

SEC. 6. Whenever a lynching shall occur, (a) any governmental officer or employee 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 knowingly failed to make all diligent efforts to prevent the lynching, and (b) any governmental officer or employee who shall have had custody of a person or persons lynched and shall have neglected, refused, or knowingly failed to make all diligent efforts to protect such person or persons from lynching, and (c) any governmental officer or employee who, in violation of his duty as such officer or employee, shall neglect, refuse, or knowingly fail to make all diligent efforts to apprehend, keep in custody, or prosecute any person who is a member of the lynch mob or who knowingly instigates, incites, organizes, aids, abets, or commits a lynching by any means whatsoever, 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.

DUTY OF ATTORNEY GENERAL OF THE UNITED STATES

SEC. 7. 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, whenever information on oath is submitted to him that a lynching has occurred, and (a) that any governmental officer or employee who shall have been charged with the duty or shall have possessed the authority as such officer or employee to prevent such lynching, has neglected, refused, or knowingly failed to make all diligent efforts to prevent such lynching, or (b) that any governmental officer or employee who shall have had custody of a person or persons lynched and has neglected, refused, or knowingly failed to make all diligent efforts to protect such person or persons from lynching, or (c) that any governmental officer or employee, in violation of his duty as such officer or employee, has neglected, refused, or knowingly failed to make all diligent efforts to apprehend, keep in custody, or prosecute any person who is a member of the lynch mob or who knowingly instigates, incites, organizes, aids, abets, or commits a lynching by any means whatsoever.

AMENDMENT TO ANTIKIDNAPING ACT

SEC. 8. The crime defined in and punishable under the Act of June 22, 1932, as amended (18 U. S. C. 1201, 1202) shall include knowingly transporting in interstate or foreign commerce, any person unlawfully abducted and held because of his race, color, religion, national origin, ancestry, language, religion, for any other reason which denies due process of law, or for purposes of punishment, conviction, or intimidation.

CIVIL ACTIONS FOR DAMAGES

SEC. 9. (a) Any person, or in the event of his death the next of kin of any person, who as the result of a lynching suffers death, physical or mental injury or property damage shall be entitled to maintain a civil action for damages for such death, injury, or damage against—

(1) any person who violates section 6, 7, or 9 of this act in connection with such lynching;

(2) (A) the United States, or the District of Columbia, or any Territory, possession, or other governmental subdivision of the United States to which local police functions have been delegated and in which the lynching takes place; or

(B) the State or governmental subdivision thereof to which local police functions have been delegated and in which the lynching takes place.

In any action brought against the United States, the District of Columbia, or any Territory or possession or other governmental subdivision of the United States, or against any State or governmental subdivision thereof, proof by a preponderance of evidence that any officers charged with preventing the lynching used all diligence and all powers vested in them for the protection of the property damaged, or of the person or persons killed or injured shall be an adequate affirmative defense. In any action brought pursuant to this section, the satisfaction of a judgment against any individual or governmental defendant shall bar further proceedings against any other individual or governmental defendant. Where recovery in any action brought pursuant to this section is based in whole or in part on death or on physical or mental injury, the judgment shall be not less than $2,000.

(b) Where any action under this section is brought against the United States, the District of Columbia or any Territory or possession or other governmental subdivision of the United States the action shall be brought and prosecuted by the claimant or claimants and any judgment recovered shall include reasonable attorney's fees.

(c) Any judge of the United States district court for the district in which any action under this section is instituted, or in which such action may have been transferred under the provisions of section 1401 of title 28 of the United States Code, may direct that such action be tried in any place in such district as he may designate.

(d) Any action brought pursuant to this section must be initiated within three years of the accrual of the cause of action.

SEVERABILITY CLAUSE

SEC. 10. If any provision of this Act or the application thereof to any person or circumstances 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.

[S. 468, 85th Cong., 1st sess.]

A BILL To extend to uniformed members of the Armed Forces the same protection against bodily attack as is now granted to personnel of the Coast Guard

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1114 of title 18, United States Code, is amended by striking out the words "man of the Coast Guard," and inserting in lieu thereof the words "uniformed members of the Army, Navy, Air Force, Marine Corps, or Coast Guard,".

[S. 500, 85th Cong., 1st sess.]

A BILL To protect the rights to political participation

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title 18, United States Code, section 594, is amended to read as follows:

"§ 594. 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 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. 2. Section 2004 of the Revised Statutes (42 U. S. C. 1971) is amended to read as follows:

"SEC. 2004. 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 (42 U. S. C. 1983), and other applicable provisions of law."

SEC. 3. (a) Any person violating the provisions of section 594 of title 18 of the United States Code (whether or not such person has been convicted of such violation) shall be subject to suit for damages by the party injured, or by his estate.

(b) Upon a showing that any person is violating (whether or not such person has been convicted of such violation) or is threatening to violate section 594 of title 18 of the United States Code, or is depriving or threatening to deprive an inhabitant of any State or Territory of the right to qualify to vote and to vote as set forth in section 2004 of the Revised Statutes, the party injured or threatened to be injured by such violation or threatened violation, or by such deprivation or threatened deprivation, or the Attorney General of the United States, in the name of the United States but for the benefit of such party, may commence and maintain an action for preventive, mandatory, or declaratory relief to prohibit or prevent such injury or threatened injury.

(c) The district courts of the United States shall have jurisdiction of proceedings brought pursuant to subsections (a) and (b) and shall exercise such jurisdiction without regard to whether the party aggrieved shall have exhausted any administrative or other remedies provided by law and without regard to the amount of the matter in controversy. The term "district courts of the United States" means any district court as constituted by chapter 5 of title 28 of the United States Code and the United States court of any Territory or other place subject to the jurisdiction of the United States.

SEC. 4. 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.

[S. 501, 85th Cong., 1st sess.]

A BILL To establish a Commission on Civil Rights in the Executive Branch of the Government

Be it enacted by the Senate and House of Representatives of the United States of American in Congress assembled, That this Act may be cited as the "Commission on Civil Rights Act of 1957."

SEC. 2. The Congress finds that the freedoms guaranteed by the Constitution of the United States have contributed, in large measure, to the rapid growth, productivity, and ingenuity, which characterizes our Nation; that, despite the continuing progress of our Nation with respect to the 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. The Congress recognizes that the national security and general welfare of the United States call for more adequate protection of the civil rights of individuals; and that the executive and legislative branches of our Government must be accurately and continuously informed concerning the extent to which fundamental constitutional rights are abridged or denied.

SEC. 3. 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. Not more than three members of the Commission shall be members of the same political party. In appointing the members of the Commission, the President is requested to provide, insofar as possible, representation for the various geographic areas of the United States. 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 $12).

SEC. 4. (a) It shall be the duty and function of the Commission to gather timely and authoritative information concerning economic, social, legal, and other 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; 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; to assist States, counties, municipalities,

and private agencies in conducting studies to protect civil rights of all Americans without regard to race, color, creed, or national origin; and to recommend to the Congress, legislation necessary to safeguard and protect the civil rights of all Americans.

(b) The Commission shall make an annual report to the President and to the Congress 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. 5. (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) 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.

(c) The Commission may accept and utilize services of voluntary and uncompensated personnel and 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 $12).

SEC. 6. (a) The Commission shall have power to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under study or investigation. Any member of the Commission may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

(b) In case of contumacy or refusal to obey a subpena issued to any person, any district court of the United States or the United States court of any Territory or possession, or the District Court of the United States for the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Commission shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation, and any failure to obey such order of the court may be punished by said court as a contempt thereof.

[S. 502, 85th Cong., 1st sess.]

A BILL to reorganize the Department of Justice for the protection of civil rights

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That 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. 2. 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.

[S. 504, 85th Cong., 1st sess.]

A BILL To extend to uniform members of the Armed Forces the same protection against bodily attack as is now granted to personnel of the Coast Guard

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1114 of title 18 of the United States Code is amended by striking out "officer or enlisted man of the Coast Guard" and inserting in lieu thereof "uniformed member of the Army, Navy, Air Force, Marine Corps, or Coast Guard."

[S. 505, 85th Cong., 1st sess.]

A BILL To declare certain rights of all persons within the jurisdiction of the United States, and for the protection of such 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".

PURPOSES

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

(a) To insure the most 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 the republican form of government of the several States from the lawless conduct of persons threatening to destroy the systems of public criminal justice therein and threatening to frustrate the functioning thereof through duly constituted officials.

RIGHT TO BE FREE OF LYNCHING

SEC. 3. It is hereby declared that the right to be free from lynching is a right of all persons, whether or not citizens of the United States, who are within the jurisdiction of the United States. As to all such persons, such right accrues by virtue of the provisions of the Constitution of the United States. As to citizens of the United States, such right additionally accrues by virtue of such citizenship. Such right is in addition to the same or any similar right or rights they may have as persons within the jurisdiction of, or as citizens of, the several States, the District of Columbia, the Territories, possessions, or other areas within the exclusive jurisdiction of the United States.

DEFINITIONS

SEC. 4. (a) Whenever two or more persons shall knowingly in concert (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 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 persons 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. 5. Any person, whether or not a governmental officer or employee, (a) who is a member of a lynch mob or (b) who knowingly instigates, incites, organizes, aids, abets, or commits a lynching by any means whatsoever, shall, upon conviction, be fined not more than $1,000, or imprisoned not more than one year, or both: *Provided, however*, That where such lynching results in death or

maiming or other serious physical or mental injury, or in damage to property, constituting a felony under applicable State, District of Columbia, Territorial, or similar law, any such person shall, upon conviction, be fined not more than $10,000, or imprisoned not more than twenty years, or both. A felony, for purposes of this section, shall be deemed an offense which, under applicable State, District of Columbia, Territorial, or similar law, is punishable by imprisonment for more than one year.

PUNISHMENT FOR KNOWING FAILURE TO PREVENT OR PUNISH LYNCHING

SEC. 6. Whenever a lynching shall occur, (a) any governmental officer or employee 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 knowingly failed to make all diligent efforts to prevent the lynching, and (b) any governmental officer or employee who shall have had custody of a person or persons lynched and shall have neglected, refused, or knowingly failed to make all diligent efforts to protect such person or persons from lynching, and (c) any governmental officer or employee who, in violation of his duty as such officer or employee, shall neglect, refuse, or knowingly fail to make all diligent efforts to apprehend, keep in custody, or prosecute any person who is a member of the lynch mob or who knowingly instigates, incites, organizes, aids, abets, or commits a lynching by any means whatsoever, 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.

DUTY OF ATTORNEY GENERAL OF THE UNITED STATES

SEC. 7. 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, whenever information on oath is submitted to him that a lynching has occurred, and (a) that any governmental officer or employee who shall have been charged with the duty or shall have possessed the authority as such officer or employee to prevent such lynching, has neglected, refused, or knowingly failed to make all diligent efforts to prevent such lynching, or (b) that any governmental officer or employee who shall have had custody of a person or persons lynched and has neglected, refused, or knowingly failed to make all diligent efforts to protect such person or persons from lynching, or (c) that any governmental officer or employee, in violation of his duty as such officer or employee, has neglected, refused, or knowingly failed to make all diligent efforts to apprehend, keep in custody, or prosecute any person who is a member of the lynch mob or who knowingly instigates, incites, organizes, aids, abets, or commits a lynching by any means whatsoever.

AMENDMENT TO ANTIKIDNAPING ACT

SEC. 8. The crime defined in and punishable under the Act of June 22, 1932, as amended (18 U. S. C. 1201, 1202), shall include knowingly transporting in interstate or foreign commerce any person unlawfully abducted and held because of his race, color, religion, national origin, ancestry, language, or religion, or for purposes of punishment, conviction, or intimidation.

CIVIL ACTIONS FOR DAMAGES

SEC. 9. (a) Any person, or in the event of his death the next of kin of any person, who as the result of a lynching suffers death, physical or mental injury, or property damage shall be entitled to maintain a civil action for damages for such death, injury, or damage against—

(1) any person who violates sections 6, 7, or 9 of this Act in connection with such lynching;

(2) (A) the United States, or the District of Columbia, or any Territory, possession, or other governmental subdivision of the United States to which local police functions have been delegated and in which the lynching takes place; or

(B) the State or governmental subdivision thereof to which local police functions have been delegated and in which the lynching takes place.

In any action brought against the United States, the District of Columbia, or any Territory or possession or other governmental subdivision of the United

States, or against any State or governmental subdivision thereof, proof by a preponderance of evidence that any officers charged with preventing the lynching used all diligence and all powers vested in them for the protection of the property damaged, or of the person or persons killed or injured shall be an adequate affirmative defense. In any action brought pursuant to this section, the satisfaction of a judgment against any individual or governmental defendant shall bar further proceedings against any other individual or governmental defendant. Where recovery in any action brought pursuant to this section is based in whole or in part on death or on physical or mental injury, the judgment shall be not less than $2,000.

(b) Where any action under this section is brought against the United States, the District of Columbia, or any Territory or possession or other governmental subdivision of the United States the action shall be brought and prosecuted by the claimant or claimants and any judgment recovered shall include reasonable attorney's fees.

(c) Any judge of the United States district court for the district in which any action under this section is instituted, or in which such action may have been transferred under the provisions of section 1404 of title 28 of the United States Code, may direct that such action be tried in any place in such district as he may designate.

(d) Any action brought pursuant to this section must be initiated within three years of the accrual of the cause of action.

SEVERABILITY CLAUSE

SEC. 10. 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.

[S. 508, 85th Cong., 1st sess.]

A BILL To amend and supplement existing civil-rights statutes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title 18, United States Code, section 241, is amended to read as follows:

"§ 241. Conspiracy against rights of citizens

"(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 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.

"(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 1 year, or both; or shall be fined not more than $10,000 or imprisoned not more than 20 years, or both, if the injury or other wrongful conduct herein shall cause the death or maiming of the person so injured or wronged."

SEC. 2. Title 18, United States Code, section 242, is amended to read as follows:

"§ 242. Deprivation of rights under color of law

"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; or shall be fined not more than $10,000 or imprisoned not more

than 20 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. 3. Title 18, United States Code, is amended by adding after section 242 thereof the following new section:

"§ 242A. Enumeration of rights, privileges, and immunities

"The rights, privileges, and immunities referred to in 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. 4. (a) Any person who deprives an inhabitant of any State of any right, privilege, or immunity secured or protected by the Constitution or the laws of the United States shall be liable to such inhabitant, or to his estate, for damages sustained thereby and for injuries, including death, suffered by such inhabitant in the course of, or as a result of, the commission of the acts which constitute such deprivation.

(b) Upon a showing that an inhabitant of any State is being deprived or is threatened to be deprived of any right, privilege, or immunity secured or protected by the Constitution or the laws of the United States, such inhabitant, or the Attorney General of the United States, in the name of the United States but for the benefit of such inhabitant, may commence and maintain an action for preventive, mandatory, or declaratory relief to prohibit or prevent such deprivation or such threatened deprivation.

(c) The rights, privileges, and immunities secured or protected by the Constitution or laws of the United States referred to in subsections (a) and (b) include the rights, privileges, and immunities protected under title 18 of the United States Code and all other criminal laws of the United States. In any action brought under subsection (a) or (b) based upon an alleged violation of any provision of title 18 or of any other criminal law of the United States, it shall not be necessary to the commencement or maintenance of such action that any person against whom such action is brought has been convicted of violating such provision.

(d) The district courts of the United States shall have jurisdiction of proceedings brought pursuant to subsections (a) and (b) and shall exercise such jurisdiction without regard to whether the party aggrieved shall have exhausted any administrative or other remedies provided by law and without regard to the amount of the matter in controversy.

(e) As used in this section—

(1) The term "district courts of the United States" means any district court as constituted by chapter 5 of title 28 of the United States Code and the United States court of any Territory or other place subject to the jurisdiction of the United States.

(2) The term "State" includes the Territories of the United States and the District of Columbia.

SEC. 5. 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.

[S. 509, 85th Cong., 1st sess.]

A BILL To strengthen the laws relating to convict labor, peonage, slavery, and involuntary servitude

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (a) of section 1581 of title 18, United States Code, is amended to read as follows:

"(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 condi-

tion of peonage, or attempts to hold, return, or arrest any person with such intent, shall be fined not more than $5,000 or imprisoned not more than five years, or both."

SEC. 2. Section 1583 of such title is amended to read as follows:

"§ 1583. Enticement into slavery

"Whoever holds or kidnaps or carries away any other person, or attempts to hold, kidnap, or carry 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, or attempts to entice, persuade, or induce, 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 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."

SEC. 3. Section 1584 of such title is amended to read as follows:

"§ 1584. 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, or attempts to commit any of the foregoing acts, shall be fined not more than $5,000 or imprisoned not more than five years, or both."

[S. 510, 85th Cong., 1st sess.]

A BILL To secure, protect, and strengthen the civil rights accruing to individuals under the Constitution and laws 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 may be cited as the "Omnibus Human Rights Act of 1957."

TITLE I—COMMISSION ON CIVIL RIGHTS

SEC. 101. The Congress finds that the freedoms guaranteed by the Constitution of the United States have contributed, in large measure, to the rapid growth, productivity, and ingenuity, which characterizes our Nation; that, despite the continuing progress of our Nation with respect to the 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. The Congress recognizes that the national security and general welfare of the United States calls for more adequate protection of the civil rights of individuals; and that the executive and legislative branches of our Government must be accurately and continuously informed concerning the extent to which fundamental constitutional rights are abridged or denied.

SEC. 102. 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. Not more than three members of the Commission shall be members of the same political party. In appointing the members of the Commission, the President is requested to provide, insofar as possible, representation for the various geographic areas of the United States. 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 $12).

SEC. 103. (a) It shall be the duty and function of the Commission to gather timely and authoritative information concerning economic, social, legal, and other 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; 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; to assist States, counties, municipalities, and private agencies in conducting studies to protect civil rights of all Americans without regard to race, color, creed, or national origin; and to recommend to the Congress legislation necessary to safeguard and protect the civil rights of all Americans.

(b) The Commission shall make an annual report to the President and to the Congress 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. 104. (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 it may effectively carry out its functions and duties.

(b) 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.

(c) The Commission may accept and utilize services of voluntary and uncompensated personnel and 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 $12).

SEC. 105. (a) The Commission shall have power to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under study or investigation. Any member of the Commission may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

(b) In case of contumacy or refusal to obey a subpena issued to any person, any district court of the United States or the United States court of any Territory or possession, or the District Court of the United States for the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Commission shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

TITLE II—CIVIL RIGHTS DIVISION OF THE DEPARTMENT OF JUSTICE

SEC. 201. 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. 202. 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.

TITLE III—JOINT COMMITTEE ON CIVIL RIGHTS

SEC. 301. 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. 302. It shall be the function of the joint committee to make a continuing study of matters relating to civil rights, including the rights, privilege, 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. 303. 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. 304. 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 services to report hearings of the joint committee, or any subcommittee thereof, shall not exceed 40 cents per hundred words.

SEC. 305. 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. 306. 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 IV—CRIMINAL LAWS, PROTECTING CONSTITUTIONAL RIGHTS, PRIVILEGES, AND IMMUNITIES

SEC. 401. Title 18, United States Code, section 241, is amended to read as follows:

"§ 241. Conspiracy against rights of citizens

"(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 or 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."

SEC. 402. Title 18, United States Code, section 242, is amended to read as follows:

"§ 242. Deprivation of rights under color of law

"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. 403. Title 18, United States Code, is amended by adding after section 242 thereof the following new section:

"§ 242A. Enumeration of rights, privileges, and immunities

"The rights, privileges, and immunities referred to in 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. 404. If any provision of this title or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the title and of the application of such provision to other persons and circumstances shall not be affected thereby.

TITLE V—LAWS PROTECTING RIGHT TO POLITICAL PARTICIPATION

SEC. 501. Title 18, United States Code, section 594, is amended to read as follows:

"§ 594. 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 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. 502. Section 2004 of the Revised Statutes (42 U. S. C. 1971) is amended to read as follows:

"SEC. 2004. 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 (42 U. S. C. 1983), and other applicable provisions of law."

SEC. 503. If any provision of this title or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the title and of the application of such provision to other persons and circumstances shall not be affected thereby.

TITLE VI—CRIMINAL LAWS RELATING TO CONVICT LABOR, PEONAGE, SLAVERY, AND INVOLUNTARY SERVITUDE

SEC. 601. Subsection (a) of section 1581 of title 18, United States Code, is amended to read as follows:

"(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, or attempts to hold, return, or arrest any person with such intent, shall be fined not more than $5,000 or imprisoned not more than five years, or both."

SEC. 602. Section 1583 of such title is amended to read as follows:

"§ 1583. Enticement into slavery

"Whoever holds or kidnaps or carries away any other person, or attempts to hold, kidnap, or carry 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, or attempts to entice, persuade, or induce, 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 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."

SEC. 603. Section 1584 of such title is amended to read as follows:

"§ 1584. 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, or attempts to commit any of the foregoing acts, shall be fined not more than $5,000 or imprisoned not more than five years, or both."

TITLE VII—PROHIBITION AGAINST DISCRIMINATION IN INTERSTATE TRANSPORTATION

SEC. 101. (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 furnishing transportation in interstate or foreign commerce, and of all facilities furnished or connected with such transportation, 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 furnishing transportation of persons in interstate or foreign commerce or of any facility furnished or connected with such transportation, 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.

SEC. 702. It shall be unlawful for any common carrier engaged in furnishing transportation of persons 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 of such carrier on account of the race, color, religion, or national origin of such passengers. It shall be unlawful for any person operating any facility furnished or connected with transportation of persons in interstate or foreign commerce, or any officer, agent, or employee thereof, to segregate, or attempt to segregate, or otherwise discriminate against such passengers on account of the race, color, religion, or national origin of such passengers. Any such carrier, or officer, agent, or employee thereof, or any such person, or officer agent, or employee thereof, who segregates or attempts to segregate such passengers or otherwise discriminates 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.

SEC. 703. For the purposes of this title, the facilities furnished or connected with the transportation of persons in interstate or foreign commerce include,

but are not limited to, waiting rooms, restrooms, restaurants, lunch counters, and similar facilities, and taxicabs and limousines, operated to service passengers using the public conveyances of carriers engaged in furnishing transportation of persons in interstate or foreign commerce.

TITLE VIII—FEDERAL EQUALITY OF OPPORTUNITY IN EMPLOYMENT ACT

SHORT TITLE

SEC. 801. This title may be cited as the "Federal Equality of Opportunity in Employment Act".

FINDINGS AND DECLARATIONS OF POLICY

SEC. 802. (a) The Congress hereby finds that, despite the continuing progress of our Nation, the practice of discrimination in employment against properly qualified persons because of their race, religion, color, national origin, or ancestry is contrary to the American principles of liberty and of equality of opportunity, is incompatible with the Constitution, forces large segments of our population into substandard conditions of living, foments industrial strife and domestic unrest, deprives the United tates of the fullest utilization of its capacities for production, endangers the national security and the general welfare, and adversely affects the domestic and foreign commerce of the United States.

(b) The right to employment without discrimination because of race, religion, color, national origin, or ancestry is hereby recognized as and declared to be a civil right of all the people of the United States.

(c) The Congress further declares that the succeeding provisions of this title are necessary for the following purposes:

(1) To remove obstructions to the free flow of commerce among the States and with foreign nations.

(2) 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.

(3) To advance toward fulfillment of the international treaty obligations imposed by the Charter of the United Nations upon the United States as a signatory thereof to promote "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion".

DEFINITIONS

SEC. 803. As used in this title—

(a) The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, receivers, or any organized group of persons and any agency or instrumentality of the United States, including the District of Columbia, or of any Territory or possession thereof.

(b) The term "employer" means a person engaged in commerce or in operations affecting commerce having in his employ fifty or more individuals; any agency or instrumentality of the United States, including the District of Columbia, or of any Territory or possession thereof; and any person acting in the interest of an employer, directly or indirectly; but shall not include any State or municipality or political subdivision thereof, or any religious, charitable, fraternal, social, educational, or sectarian corporation or association, if no part of the net earnings inures to the benefit of any private shareholder or individual, other than a labor organization.

(c) The term "employment agency" means any person undertaking with or without compensation to procure employees or opportunities to work for an employer; but shall not include any State or municipality or political subdivision thereof, or any religious, charitable, fraternal, social, educational, or sectarian corporation or association, if no part of the net earnings inures to the benefit of any private shareholder or individual.

(d) The term "labor organization" means any organization, having fifty or more members employed by any employer or employers, which exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of

employment, terms or conditions of employment, or for other mutual aid or protection in connection with employment.

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

(f) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce.

(g) The term "Commission" means the Equality of Opportunity in Employment Commission, created by section 806 hereof.

EXEMPTION

SEC. 804. This title shall not apply to any employer with respect to the employment of aliens outside the continental United States, its Territories and possessions.

UNLAWFUL EMPLOYMENT PRACTICES DEFINED

SEC. 805. (a) It shall be an unlawful employment practice for an employer—

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

(2) to utilize in the hiring or recruitment of individuals for employment any employment agency, placement service, training school or center, labor organization, or any other source which discriminates against such individuals because of their race, religion, color, national origin, or ancestry.

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

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

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

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

(d) It shall be an unlawful employment practice for any employer, employment agency, or labor organization to discharge, expel, or otherwise discriminate against any person, because he has opposed any unlawful employment practice or has filed a charge, testified, participated, or assisted in any proceeding under this title.

THE EQUALITY OF OPPORTUNITY IN EMPLOYMENT COMMISSION

SEC. 806. (a) There is hereby created a Commission to be known as the Equality of Opportunity in Employment Commission, which shall be composed of seven members who shall be appointed by the President by and with the advice and consent of the Senate. One of the original members shall be appointed for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years, one for a term of five years, one for a term of six years, and one for a term of seven years, but their successors shall be appointed for terms of seven years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as Chairman of the Commission. Any member of the Commission may be removed by the President upon notice and hearing for neglect of duty or malfeasance in office, but for no other cause.

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

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

(d) The Commission shall at the close of each fiscal year report to the Congress and to the President concerning the cases it has heard; the decisions it has

rendered; the names, salaries, and duties of all individuals in its employ and the moneys it has disbursed; and shall make such further reports on the cause of and means of eliminating discrimination and such recommendations for further legislation as may appear desirable.

(e) Each member of the Commission shall receive a salary of $15,000 a year.

(f) The principal office of the Commission shall be in the District of Columbia, but it may meet or exercise any or all of its powers at any other place and may establish such regional offices as it deems necessary. The Commission may, by one or more of its members or by such agents as it may designate, conduct any investigation, proceeding, or hearing necessary to its functions in any part of the United States. Any such agent, other than a member of the Commission, designated to conduct a proceeding or a hearing shall be a resident of the judicial circuit, as defined in title 28, United States Code, chapter 3, section 41, within which the alleged unlawful employment practice occurred.

(g) The Commission shall have power—

(1) to appoint, in accordance with the Civil Service Act, rules, and regulations, such officers, agents, and employees, as it deems necessary to assist it in the performance of its functions, and to fix their compensation in accordance with the Classification Act of 1949, as amended; attorneys appointed under this section may, at the direction of the Commission, appear for and represent the Commission in any case in court;

(2) to cooperate with and utilize regional, State, local, and other agencies;

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

(4) upon the request of any employer, whose employees or some of them refuse or threaten to refuse to cooperate in effectuating the provisions of this title, to assist in such effectuation by conciliation or other remedial action;

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

(6) to create such local, State, or regional advisory and conciliation councils as in its judgment will aid in effectuating the purpose of this title, and the Commission may empower them to study the problem or specific instances of discrimination in employment because of race, religion, color, national origin, or ancestry and to foster through community effort or otherwise good will, cooperation, and conciliation among the groups and elements of the population, and make recommendations to the Commission for the development of policies and procedures in general and in specific instances. Such advisory and conciliation councils shall be composed of representative citizens resident of the area for which they are appointed, who shall serve without compensation, but shall receive transportation and per diem in lieu of subsistence as authorized by section 5 of the Act of August 2, 1946 (5 U. S. C. 73b-2), for persons serving without compensation; and the Commission may make provision for technical and clerical assistance to such councils and for the expenses of such assistance; the Commission may, to the extent it deems it necessary, provide by regulation for exemption of such persons from the operation of title 18 United States Code, sections 281, 283, 284, 434, and 1914, and section 190 of the Revised Statutes (5 U. S. C. 99); such regulation may be issued without prior notice and hearing.

PREVENTION OF UNLAWFUL EMPLOYMENT PRACTICES

SEC. 807. (a) The Commission is empowered, as hereinafter provided, to prevent any person from engaging in any unlawful practice as set forth in section 805. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise: *Provided*, That an agreement between or among an employer or employers and a labor organization or labor organizations pertaining to discrimination in employment shall be enforceable in accordance with applicable law, but nothing contained therein shall be construed or permitted to foreclose the jurisdiction over any practice or occurrence granted the Commission by this title: *Provided further*, That the Commission is empowered by agreement with any agency of any State, Territory, possession or local government, to cede, upon such terms and conditions as may be agreed, to such agency jurisdiction over any cases or class of cases, if such agency, in the judgment of

the Commission, has effective power to eliminate and prohibit discrimination in employment in such cases.

(b) Whenever a sworn written charge has been filed by or on behalf of any person claiming to be aggrieved, or a written charge has been filed by a member of the Commission, that any person subject to the title has engaged in any unlawful employment practice, the Commission shall investigate such charge and if it shall determine after such preliminary investigation that probable cause exists for crediting such written charge, it shall endeavor to eliminate any unlawful employment practice by informal methods of conference, conciliation, and persuasion.

(c) If the Commission fails to effect the elimination of such unlawful practice and to obtain voluntary compliance with this title, or in advance thereof if circumstances warrant, the Commission shall have power to issue and cause to be served upon any person charged with the commission of an unlawful employment practice (hereinafter called the "respondent") a complaint stating the charges in that respect, together with a notice of hearing before the Commission, or a member thereof, or before a designated agent, at a place therein fixed, not less than ten days after the service of such complaint. No complaint shall issue based upon any unlawful employment practice occurring more than one year prior to the filing of the charge with the Commission and the service of a copy thereof upon the respondent, unless the person aggrieved thereby was prevented from filing such charge by reason of service in the Armed Forces, in which event the period of military service shall not be included in computing the one-year period.

(d) The respondent shall have the right to file a verified answer to such complaint and to appear at such hearing in person or otherwise, with or without counsel, to present evidence and to examine and cross-examine witnesses.

(e) The Commission or the member or designated agent conducting such hearing shall have the power reasonably and fairly to amend any complaint, and the respondent shall have like power to amend its answer.

(f) All testimony shall be taken under oath.

(g) The member of the Commission who filed a charge shall not participate in a hearing thereon or in a trial thereof.

(h) At the conclusion of a hearing before a member or designated agent of the Commission, such member or agent shall transfer the entire record thereof to the Commission, together with his recommended decision and copies thereof shall be served upon the parties. The Commission, or a panel of three qualified members designated by it to sit and act as the Commission in such case, shall afford the parties an opportunity to be heard on such record at a time and place to be specified upon reasonable notice. In its discretion, the Commission upon notice may take further testimony.

(i) With the approval of the member or designated agent conducting the hearing, a case may be ended at any time prior to the transfer of the record thereof to the Commission by agreement between the parties for the elimination of the alleged unlawful employment practice on mutually satisfactory terms.

(j) If, upon the preponderance of the evidence, including all the testimony taken, the Commission shall find that the respondent engaged in any unlawful employment practice, the Commission shall state its findings of fact and shall issue and cause to be served on such person and other parties an order requiring such person to cease and desist from such unlawful employment practice and to take such affirmative action, including reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the discrimination), as will effectuate the policies of the Act: *Provided*, That interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable. Such order may further require such respondent to make reports from time to time showing the extent to which it has complied with the order. If the Commission shall find that the respondent has not engaged in any unlawful employment practice, the Commission shall state its findings of fact and shall issue and caused to be served on such person and other parties an order dismissing the complaint.

(k) Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the case may at any time be ended by agreement between the parties, approved by the Commission, for the elimination of the alleged unlawful employment practice on mutually satisfactory terms, and the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

(f) The proceedings held pursuant to this section shall be conducted in conformity with the standards and limitations of sections 5, 6, 7, 8, and 11 of the Administrative Procedure Act.

JUDICIAL REVIEW

SEC. 805. (a) The Commission shall have power to petition any United States Court of Appeals or, if the court of appeals to which application might be made is in vacation, any district court within any circuit or district, respectively, wherein the unlawful employment practice in question occurred, or wherein the respondent resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court to which petition is made a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and the order of the Commission. Upon such filing, the court shall conduct further proceedings in conformity with the standards, procedures, and limitations established by section 10 of the Administrative Procedure Act.

(b) Upon such filing the court shall cause notice thereof to be served upon such respondent and thereupon shall have jurisdiction of the proceeding and of the question determined therein and shall have power to grant such temporary relief or restraining order as it deems just and proper and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Commission.

(c) No objection that has not been urged before the Commission, its member, or agent shall be considered by the court unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances.

(d) The findings of the Commission with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive.

(e) If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Commission, its member, or agent, the court may order such additional evidence to be taken before the Commission, its member, or agent and to be made a part of the transcript.

(f) The Commission may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and its recommendations, if any, for the modification or setting aside of its original order.

(g) The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate United States court of appeals, if application was made to the district court or other United States court as hereinabove provided, and by the Supreme Court of the United States as provided in title 28, United States Code, section 1254.

(h) Any person aggrieved by a final order of the Commission may obtain a review of such order in any United States court of appeals of the judicial circuit wherein the unlawful employment practice in question was alleged to have been engaged in or wherein such person resides or transacts business or the Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Commission be modified or set aside. A copy of such petition shall be forthwith served upon the Commission and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding certified by the Commission, including the pleadings and testimony upon which the order complained of was entered and the findings and order of the Commission. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Commission under subsections (a), (b), (c), (d), (e), and (f), and shall have the same exclusive jurisdiction to grant to the Commission such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Commission.

(i) Upon such filing by a person aggrieved the reviewing court shall conduct further proceedings in conformity with the standards, procedures, and limitations established by section 10 of the Administrative Procedure Act.

(j) The commencement of proceedings under this section shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

(k) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part an order of the Commission, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", approved March 23, 1932 (U. S. C., title 29, secs. 101–115).

(l) Petitions filed under this Act shall be heard expeditiously.

INVESTIGATORY POWERS

SEC. 809. (a) For the purpose of all investigations, proceedings, or hearings which the Commission deems necessary or proper for the exercise of the powers vested in it by this title, the Commission, or any member thereof, shall have power to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence relating to any investigation, proceeding, or hearing before the Commission, its member, or agent conducting such investigation, proceeding, or hearing.

(b) Such attendance of witnesses and the production of such evidence may be required, from any place in the United States, including the District of Columbia, or any Territory or possession thereof, at any designated place of hearing.

(c) In case of contumacy or refusal to obey a subpena issued to any person under this title, any district court within the jurisdiction of which the investigation, proceeding, or hearing is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Commission shall have jurisdiction to issue to such person an order requiring him to appear before the Commission, its member, or agent, there to produce evidence if so ordered, or there to give testimony relating to the investigation, proceeding, or hearing.

(d) No person shall be excused from attending and testifying or from producing documentary or other evidence in obedience to the subpena of the Commission, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying. The immunity herein provided shall extend only to natural persons so compelled to testify.

(e) Any member of the Commission, or any agent designated by the Commission for such purposes, may administer oaths, examine witnesses, and receive evidence.

(f) Complaints, orders, and other process and papers of the Commission, its member, agent, or agency, may be served either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be proof of the same, and the return post-office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same. Witnesses summoned before the Commission, its member, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(g) All process of any court to which application may be made under this title may be served in the judicial district wherein the defendant or other person required to be served resides or may be found.

(h) The several departments and agencies of the Government, when directed by the President, shall furnish the Commission, upon its request, all records, papers, and information in their possession relating to any matter before the Commission.

ENFORCEMENT OF ORDERS DIRECTED TO GOVERNMENT AGENCIES AND CONTRACTORS

SEC. 810. (a) The President is authorized to take such action as may be necessary (1) to conform fair employment practices within the Federal establishment with the policies of this title, and (2) to provide that any Federal employee aggrieved by any employment practice of his employer must exhaust the administrative remedies prescribed by Executive order or regulations governing fair employment practices within the Federal establishment prior to seeking relief under the provisions of this title. The provision of section 808 shall not apply with respect to an order of the Commission under section 807 directed to any agency or instrumentality of the United States, or of any Territory or possession thereof, or of the District of Columbia, or any officer or employee thereof. The Commission may request the President to take such action as he deems appropriate to obtain compliance with such orders.

(b) The President shall have power to provide for the establishment of rules and regulations to prevent the committing or continuing of any unlawful employment practice as herein defined by any person who makes a contract with any agency or instrumentality of the United States (excluding any State or political subdivision thereof) or of any Territory or possession of the United States, which contract requires the employment of at least fifty individuals. Such rules and regulations shall be enforced by the Commission according to the procedure hereinbefore provided.

NOTICES TO BE POSTED

SEC. 811. (a) Every employer, employment agency, and labor organization, as the case may be, shall post and keep posted in conspicuous places upon its premises where notices to employees, applicants for employment, and members are customarily posted a notice to be prepared or approved by the Commission setting forth excerpts of this title and such other relevant information which the Commission deems appropriate to effectuate the purposes of this title.

(b) A willful violation of this section shall be punishable by a fine of not less than $100 or more than $500 for each separate offense.

VETERANS' PREFERENCE

SEC. 812. Nothing contained in this title shall be construed to repeal or modify any Federal, State, Territorial, or local law creating special rights or preference for veterans.

RULES AND REGULATIONS

SEC. 813. (a) The Commission shall have authority from time to time to issue, amend, or rescind suitable regulations to carry out the provisions of this title. Regulations issued under this section shall be in conformity with the standards and limitations of the Administrative Procedure Act.

(b) If at any time after the issuance of any such regulation or any amendment or rescission thereof, there is passed a concurrent resolution of the two Houses of the Congress stating in substance that the Congress disapproves such regulation, amendment, or rescission, such disapproved regulation, amendment, or rescission shall not be effective after the date of the passage of such concurrent resolution.

FORCIBLY RESISTING THE COMMISSION OR ITS REPRESENTATIVES

SEC. 814. The provisions of section 11, title 18, United States Code, shall apply to officers, agents, and employees of the Commission in the performance of their official duties.

SEPARABILITY CLAUSE

SEC. 815. If any provision of this title or the application of such provision to any person or circumstance shall be held invalid, the remainder of this title or the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

EFFECTIVE DATE

SEC. 816. This title shall become effective sixty days after enactment, except that subsections 807 (c) to (1), inclusive, and section 808 shall become effective six months after enactment.

TITLE IX—FEDERAL ANTILYNCHING ACT

SHORT TITLE

SEC. 901. This title may be cited as the "Federal Antilynching Act".

PURPOSES

SEC. 902. The Congress finds that the succeeding provisions of this title are necessary in order to accomplish the following purposes:

(a) To insure the most 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 the republican form of government of the several States from the lawless conduct of persons threatening to destroy the systems of public criminal justice therein and threatening to frustrate the functioning thereof through duly constituted officials.

RIGHT TO BE FREE OF LYNCHING

SEC. 903. It is hereby declared that the right to be free from lynching is a right of all persons, whether or not citizens of the United States, who are within the jurisdiction of the United States. As to all such persons, such right accrues by virtue of the provisions of the Constitution of the United States. As to citizens of the United States, such right additionally accrues by virtue of such citizenship. Such right is in addition to the same or any similar right or rights they may have as persons within the jurisdiction of, or as citizens of, the several States, the District of Columbia, the Territories, possessions, or other areas within the exclusive jurisdiction of the United States.

DEFINITIONS

SEC. 904. (a) Whenever two or more persons shall knowingly in concert (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 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 persons shall constitute a lynch mob within the meaning of this title. Any such action, or attempt at such action, by a lynch mob shall constitute lynching within the meaning of this title.

(b) The term "governmental officer or employee", as used in this title, 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. 905. Any person, whether or not a governmental officer or employee, (a) who is a member of a lynch mob, or (b) who knowingly instigates, incites, organizes, aids, abets, or commits a lynching by any means whatsoever, shall, upon conviction, be fined not more than $1,000, or imprisoned not more than one year, or both: *Provided, however,* That where such lynching results in death or maiming or other serious physical or mental injury, or in damage to property, constituting a felony under applicable State, District of Columbia, Territorial, or similar law, any such person shall, upon conviction, be fined not more than $10,000, or imprisoned not more than twenty years, or both. A felony, for purposes of this section, shall be deemed an offense which, under applicable State, District of Columbia, Territorial, or similar law, is punishable by imprisonment for more than one year.

PUNISHMENT FOR KNOWING FAILURE TO PREVENT OR PUNISH LYNCHING

SEC. 906. Whenever a lynching shall occur, (a) any governmental officer or employee 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 neg-

lected, refused, or knowingly failed to make all diligent efforts to prevent the lynching, and (b) any governmental officer or employee who shall have had custody of a person or persons lynched and shall have neglected, refused, or knowingly failed to make all diligent efforts to protect such person or persons from lynching, and (c) any governmental officer or employee who, in violation of his duty as such officer or employee, shall neglect, refuse, or knowingly fail to make all diligent efforts to apprehend, keep in custody, or prosecute any person who is a member of the lynch mob or who knowingly instigates, incites, organizes, aids, abets, or commits a lynching by any means whatsoever, 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 both.

DUTY OF ATTORNEY GENERAL OF THE UNITED STATES

SEC. 907. The Attorney General of the United States shall cause an investigation to be made to determine whether there has been any violation of this title, whenever information on oath is submitted to him that a lynching has occurred, and (a) that any governmental officer or employee who shall have been charged with the duty or shall have possessed the authority as such officer or employee to prevent such lynching, has neglected, refused, or knowingly failed to make all diligent efforts to prevent such lynching, or (b) that any governmental officer or employee who shall have had custody of a person or persons lynched and has neglected, refused, or knowingly failed to make all diligent efforts to protect such person or persons from lynching, or (c) that any governmental officer or employee, in violation of his duty as such officer or employee, has neglected, refused, or knowingly failed to make all diligent efforts to apprehend, keep in custody, or prosecute any person who is a member of the lynch mob or who knowingly instigates, incites, organizes, aids, abets, or commits a lynching by any means whatsoever.

AMENDMENT TO ANTIKIDNAPING ACT

SEC. 908. The crime defined in and punishable under the Act of June 22, 1932, as amended (18 U. S. C. 1201, 1202) shall include knowingly transporting in interstate or foreign commerce, any person unlawfully abducted and held because of his race, color, religion, national origin, ancestry, language, or religion, or for purposes of punishment, conviction, or intimidation.

CIVIL ACTIONS FOR DAMAGES

SEC. 909. (a) Any person, or in the event of his death the next of kin of any person, who as the result of a lynching suffers death, physical or mental injury, or property damage shall be entitled to maintain a civil action for damages for such death, injury, or damage against—

(1) any person who violates section 906, 907, or 909 of this title in connection with such lynching;

(2) (A) the United States, or the District of Columbia, or any Territory, possession, or other governmental subdivision of the United States to which local police functions have been delegated and in which the lynching takes place; or

(B) the State or governmental subdivision thereof to which local police functions have been delegated and in which the lynching takes place.

In any action brought against the United States, the District of Columbia, or any Territory or possession or other governmental subdivision of the United States, or against any State or governmental subdivision thereof, proof by a preponderance of evidence that any officers charged with preventing the lynching used all diligence and all powers vested in them for the protection of the property damaged, or of the person or persons killed or injured shall be an adequate affirmative defense. In any action brought pursuant to this section, the satisfaction of a judgment against any individual or governmental defendant shall bar further proceedings against any other individual or governmental defendant. Where recovery in any action brought pursuant to this section is based in whole or in part on death or on physical or mental injury, the judgment shall be not less than $2,000.

(b) Where any action under this section is brought against the United States, the District of Columbia, or any Territory or possession or other governmental subdivision of the United States, the action shall be brought and prosecuted by the claimant or claimants and any judgment recovered shall include reasonable attorney's fees.

(c) Any judge of the United States district court for the district in which any action under this section is instituted, or in which such action may have been transferred under the provisions of section 1404 of title 28 of the United States Code, may direct that such action be tried in any place in such district as he may designate.

(d) Any action brought pursuant to this section must be initiated within 3 years of the accrual of the cause of action.

SEVERABILITY CLAUSE

SEC. 910. If any provision of this title or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the title and of the application of such provision to other persons and circumstances shall not be affected thereby.

TITLE X—FEDERAL ANTI-POLL-TAX ACT

SEC. 1001. This title may be cited as the "Federal Anti-Poll-Tax Act."

SEC. 1002. When used in this title—

(a) The term "poll tax" shall be construed to include specifically, but not by way of limitation, any tax, however designated, which is, or at any time was, imposed, increased, accelerated, or otherwise unfavorably modified, as a direct or indirect prerequisite to or consequence of voting in a national election.

(b) The term "voting in a national election" shall mean voting or registering to vote in any primary or other election for President, Vice President, or elector or electors for President or Vice President, or for United States Senator or for Member of the House of Representatives.

SEC. 1003. It shall be unlawful for any person, whether or not acting on behalf of any State or any governmental subdivision thereof or therein, to levy, collect, or require the payment of any poll tax, or otherwise interfere with any person's voting in any national election by reason of such person's failure or refusal to pay or assume the obligation of payment of any poll tax. Any such action by any such person shall be deemed an interference with the manner of holding such elections, an abridgment of the right and privilege of citizens of the United States to vote for such officers, and an obstruction of the operations of the Federal Government.

SEC. 1004. In any action brought under section 1202 for preventive, mandatory, or declaratory relief based upon an alleged violation or threatened violation of this title, any appeal to the appropriate court of appeals and review thereof by the Supreme Court shall be heard expeditiously and shall, where practicable, be determined before the next national election in connection with which such violation or threatened violation is alleged.

SEC. 1005. If any provision of this title or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the title and the application of such provision to other persons and circumstances shall not be affected thereby.

TITLE XI—PROTECTION OF MEMBERS OF ARMED FORCES

SEC. 1101. Section 1114 of title 18 of the United States Code is amended by striking out "officer or enlisted man of the Coast Guard" and inserting in lieu thereof "member of the Army, Navy, Air Force, Marine Corps, or Coast Guard".

TITLE XII—CIVIL ACTIONS AND EQUITABLE RELIEF

SEC. 1201. Any person who deprives an inhabitant of any State of any right, privilege, or immunity secured or protected by the Constitution or the laws of the United States shall be liable to such inhabitant, or to his estate, for damages sustained thereby and for injuries, including death, suffered by such inhabitant in the course of, or as a result of, the commission of the acts which constitute such deprivation.

SEC. 1202. Upon a showing that an inhabitant of any State is being deprived or is threatened to be deprived of any right, privilege, or immunity secured or protected by the Constitution or the laws of the United States, such inhabitant, or the Attorney General of the United States, in the name of the United States but for the benefit of such inhabitant, may commence and maintain an action for preventive, mandatory, or declaratory relief to prohibit or prevent such deprivation or such threatened deprivation.

SEC. 1203. The rights, privileges, and immunities secured or protected by the Constitution or laws of the United States referred to in sections 1201 and 1202 include the rights, privileges, and immunities protected under title 18 of the United States Code and all other criminal laws of the United States. In any action brought under section 1201 or 1202 based upon an alleged violation of any provision of title 18 or of any other criminal law of the United States, it shall not be necessary to the commencement or maintenance of such action that any person against whom such action is brought has been convicted of violating such provision.

SEC. 1204. The district courts of the United States shall have jurisdiction of proceedings brought pursuant to sections 1201 and 1202 and shall exercise such jurisdiction without regard to whether the party aggrieved shall have exhausted any administrative or other remedies provided by law and without regard to the amount of the matter in controversy.

SEC. 1205. As used in this title—

(a) The term "district courts of the United States" means any district court as constituted by chapter 5 of title 28 of the United States Code and the United States court of any Territory or other place subject to the jurisdiction of the United States.

(b) The term "State" includes the Territories of the United States and the District of Columbia.

SEC. 1206. This title shall not apply to the rights, privileges, and immunities secured and protected by titles VIII and IX of this Act.

TITLE XIII—SEPARABILITY

SEC. 1301. If any title of this Act or the application thereof to any person or circumstances is held invalid, the validity of the other titles of this Act and the application of such title to other persons and circumstances shall not be affected thereby.

[S. Con. Res. 5, 85th Cong., 1st sess.]

CONCURRENT RESOLUTION

Resolved by the Senate (the House of Representatives concurring), That 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. 2. 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. 3. 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. 4. The 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 services to report hearings of the joint committee, or any subcommittee thereof, shall not exceed 25 cents per hundred words.

SEC. 5. 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. 6. 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.

[Subcommittee print, January 31, 1957]

[S. —, 85th Cong., 1st sess.]

A BILL To secure, protect, and strengthen the civil rights accruing to individuals under the Constitution and laws 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 may be cited as the "Omnibus Civil Rights Act of 1957".

TITLE I—TO PROTECT THE RIGHT TO POLITICAL PARTICIPATION

SEC. 101. Title 18, United States Code, section 594, is amended to read as follows:

"SEC. 594. 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 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. 102. Section 2004 of the Revised Statutes (42 U. S. C. 1971) 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 (42 U. S. C. 1983), and other applicable provisions of law."

SEC. 103. (a) Any person violating the provisions of section 594 of title 18 of the United States Code (whether or not such person has been convicted of such violation) shall be subject to suit for damages by the party injured, or by his estate.

(b) Upon a showing that any person is violating (whether or not such person has been convicted of such violation) or is threatening to violate section 594 of title 18 of the United States Code, or is depriving or threatening to deprive an inhabitant of any State or Territory of the right to qualify to vote and to vote as set forth in section 2004 of the Revised Statutes, the party injured or threatened to be injured by such violation or threatened violation, or by such deprivation or threatened deprivation, or the Attorney General of the United States, in the name of the United States but for the benefit of such party, may commence and maintain an action for preventive, mandatory, or declaratory relief to prohibit or prevent such injury or threatened injury. In any proceeding hereunder the United States shall be liable for costs the same as a private person.

(c) The district courts of the United States shall have jurisdiction of proceedings brought pursuant to subsections (a) and (b) and shall exercise such jurisdiction without regard to whether the party aggrieved shall have exhausted any administrative or other remedies provided by law and without regard to the amount of the matter in controversy. The term "district courts of the United States" means any district court as constituted by chapter 5 of title 28 of the United States Code and the United States court of any Territory other place subject to the jurisdiction of the United States.

TITLE II—COMMISSION ON CIVIL RIGHTS

SEC. 201. (a) There is created in the executive branch of the Government a Commission on Civil Rights (hereinafter called the "Commission").

(b) The Commission shall be composed of six members who shall be appointed by the President by and with the advice and consent of the Senate. Not more than three of the members shall at any one time be of the same political party.

(c) 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 that office.

(d) Any vacancy in the Commission shall not affect its powers and shall be filled in the same manner, and subject to the same limitation with respect to party affiliations as the original appointment was made.

(e) Four members of the Commission shall constitute a quorum.

DUTIES OF THE COMMISSION

SEC. 202. (a) The Commission shall—

(1) investigate allegations in writing that certain citizens of the United States are being deprived of their right to vote or that certain persons in the United States are voting illegally or are being subjected to unwarranted economic pressures by reason of their sex, color, race, religion, or national origin.

(2) study and collect information concerning economic, social, and legal developments constituting a denial of equal protection of the laws under the Constitution; and

(3) appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution.

(b) The Commission shall submit interim reports to the President at such times as either the Commission or the President shall deem desirable, and shall submit to the President a final and comprehensive report of its activities, findings, and recommendations not later than two years from the date of the enactment of this statute.

(c) Sixty days after the submission of its final report and recommendations the Commission shall cease to exist.

POWERS OF THE COMMISSION

SEC. 203. (a) Within the limitations of its appropriations, the Commission may appoint a full-time staff director and such other personnel as it deems advisable, in accordance with the civil service and classification laws, and may procure services as authorized by section 15 of the Act of August 2, 1946 (60 Stat. 810; 5 U. S. C. 55a) but at rates for individuals not in excess of $50 per diem.

(b) The Commission may accept and utilize services of voluntary and uncompensated personnel and 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 $12).

(c) 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.

(d) All Federal agencies shall cooperate fully with the Commission to the end that it may effectively carry out its functions and duties.

(e) The Commission, or on the authorization of the Commission any subcommittee of two or more members, may, for the purpose of carrying out the provisions of this title, hold such hearings and act at such times and places as the Commission or such authorized subcommittee may deem advisable. Subpenas for the attendance and testimony of witnesses and/or the production of written or other matter may be issued over the signature of the Chairman of the Commission or of such subcommittee, and may be served by any person designated by such Chairman: *Provided*, That, notwithstanding anything to the contrary in this title contained, the Commission shall not constitute or appoint any subcommittee of less than two members, one member to be from each political party affiliation.

(f) In case of contumacy or refusal to obey a subpena, any district court of the United States or the United States court of any Territory or possession, or the District Court of the United States for the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Attorney General of the United States shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission or a subcommittee thereof, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

COMPENSATION OF MEMBERS OF THE COMMISSION

SEC. 204. (a) Each member of the Commission who is not otherwise in the service of the Government of the United States shall receive the sum of $50 per day for each day spent in the work of the Commission, shall be reimbursed for actual and necessary travel expenses, and shall receive a per diem allowance of $12 in lieu of actual expenses for subsistence, inclusive of fees or tips to porters and stewards.

(b) Each member of the Commission who is otherwise in the service of the Government of the United States shall serve without compensation in addition to that received for such other service, but while engaged in the work of the Commission shall be reimbursed for actual and necessary travel expenses, and shall receive a per diem allowance of $12 in lieu of actual expenses for subsistence, inclusive of fees or tips to porters and stewards.

APPROPRIATIONS

SEC. 205. There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, so much as may be necessary to carry out the provisions of this title.

TITLE III—CIVIL RIGHTS DIVISION IN THE DEPARTMENT OF JUSTICE

SEC. 301. 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. 302. 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.

TITLE IV— FEDERAL ANTILYNCHING ACT

SHORT TITLE

SEC. 401. This title may be cited as the "Federal Antilynching Act".

PURPOSES

SEC. 402. The Congress finds that the succeeding provisions of this title are necessary in order to accomplish the following purposes:

(a) To insure the most 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 the republican form of government of the several States from the lawless conduct of persons threatening to destroy the systems of public criminal justice therein and threatening to frustrate the functioning thereof through duly constituted officials.

RIGHT TO BE FREE OF LYNCHING

SEC. 403. It is hereby declared that the right of due process of law as guaranteed by the Constitution to all persons who are within the jurisdiction of the United States whether or not citizens thereof includes a prohibition against lynching. As to citizens of the United States, such right additionally accrues by virtue of such citizenship. Such right is in addition to the same or any similar right or rights they may have as persons within the jurisdiction of, or as citizens of, the several States, the District of Columbia, the Territories, possessions, or other areas within the exclusive jurisdiction of the United States.

DEFINITIONS

SEC. 404. (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, religion, or for any other reason which denies due process of law, 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 persons shall constitute a lynch mob within the meaning of this title. Any such action, or attempt at such action, by a lynch mob shall constitute lynching within the meaning of this title.

(b) The term "governmental officer or employee", as used in this title, 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. 405. Any person, whether or not a governmental officer or employee, (a) who is a member of a lynch mob or (b) who knowingly instigates, incites, organizes, aids, abets, or commits a lynching by an means whatsoever, shall, upon conviction, be fined not more than $1,000, or imprisoned not more than one year, or both; *Provided, however*, That where such lynching results in death or maiming or other serious physical or mental injury, or in damage to property, constituting a felony under applicable State, District of Columbia, Territorial, or similar law, any such person shall, upon conviction, be fined not more than $10,000, or imprisoned not more than twenty years, or both. A felony, for purposes of this section shall be deemed an offense which, under applicable State, District of Columbia, Territorial, or similar law, is punishable by imprisonment for more than one year.

PUNISHMENT FOR KNOWING FAILURE TO PREVENT OR PUNISH LYNCHING

SEC. 406. Whenever lynching shall occur, (a) any governmental officer or employee 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 knowingly failed to make all diligent efforts to prevent the lynching, and (b) any governmental officer or employee who shall have had custody of a person or persons lynched and shall have neglected, refused, or knowingly failed to make all diligent efforts to protect such person or persons from lynching, and (c) any governmental officer or employee who, in violation of his duty as such officer or employee, shall neglect, refuse, or knowingly fail to make all diligent efforts to apprehend, keep in custody, or prosecute any person who is a member of the lynch mob or who knowingly instigates, incites, organizes, aids, abets, or commits a lynching by any means whatsoever, 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.

DUTY OF ATTORNEY GENERAL OF THE UNITED STATES

SEC. 407. The Attorney General of the United States shall cause an investigation to be made to determine whether there has been any violation of this title, whenever information on oath is submitted to him that a lynching has occurred, and (a) that any governmental officer or employee who shall have been

charged with the duty or shall have possessed the authority as such officer or employee to prevent such lynching, has neglected, refused, or knowingly failed to make all diligent efforts to prevent such lynching, or (b) that any governmental officer or employee who shall have had custody of a person or persons lynched and has neglected, refused, or knowingly failed to make all diligent efforts to protect such person or persons from lynching, or (c) that any governmental officer or employee, in violation of his duty as such officer or employee, has neglected, refused, or knowingly failed to make all diligent efforts to apprehend, keep in custody, or prosecute any person who is a member of the lynch mob or who knowingly instigates, incites, organizes, aids, abets, or commits a lynching by any means whatsoever.

AMENDMENT TO ANTIKIDNAPING ACT

SEC. 408. The crime defined in and punishable under the Act of June 22, 1932, as amended (18 U. S. C. 1201, 1202) shall include knowingly transporting in interstate or foreign commerce, any person unlawfully abducted and held because of his race, creed, color, national origin, ancestry, language, religion, or for any other reason which denies due process of law, or for purposes of punishment, conviction, or intimidation.

CIVIL ACTIONS FOR DAMAGES

SEC. 409. (a) Any person, or in the event of his death the next of kin of any person, who as the result of a lynching suffers death, physical or mental injury, or property damage shall be entitled to maintain a civil action for damages for such death, injury, or damage against—

(1) any person who violates section 405, 406, or 408 of this title in connection with such lynching;

(2) (A) the United States, or the District of Columbia, or any Territory, possession, or other governmental subdivision of the United States to which local police functions have been delegated and in which the lynching takes place; or

(B) the State or governmental subdivision thereof to which local police functions have been delegated and in which the lynching takes place.

In any action brought against the United States, the District of Columbia, or any Territory or possession or other governmental subdivision of the United States, or against any State or governmental subdivision thereof, proof by a preponderance of evidence that any officers charged with preventing the lynching used all diligence and all powers vested in them for the protection of the property damaged, or of the person or persons killed or injured shall be an adequate affirmative defense. In any action brought pursuant to this section, the satisfaction of a judgment against any individual or governmental defendant shall bar further proceedings against any other individual or governmental defendant. Where recovery in any action brought pursuant to this section is based in whole or in part on death or on physical or mental injury, the judgment shall be not less than $2,000.

(b) Where any action under this section is brought against the United States, the District of Columbia, or any Territory or possession or other governmental subdivision of the United States, the action shall be brought and prosecuted by the claimant or claimants and any judgment recovered shall include reasonable attorney's fees.

(c) Any judge of the United States district court for the district in which any action under this section is instituted, or in which such action may have been transferred under the provisions of section 1404 of title 28 of the United States Code, may direct that such action be tried in any place in such district as he may designate.

(d) Any action brought pursuant to this section must be initiated within three years of the accrual of the cause of action.

TITLE V—CIVIL ACTIONS AND EQUITABLE RELIEF

SEC. 501. Section 1980 of the Revised Statutes (42 U. S. C. 1985), is amended by adding thereto two paragraphs to be designated "Fourth" and "Fifth" and to read as follows:

"Fourth. Whenever any persons have engaged or are about to engage in any acts or practices which would give rise to a cause of action pursuant to paragraphs First, Second, or Third, the Attorney General may institute for the

United States, or in the name of the United States but for the benefit of the real party in interest, a civil action or other proper proceeding for redress, or preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order.

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

SEC. 502. Section 1343 of title 28, United States Code, is amended as follows:

(a) Amend the catch line of said section to read,

"§ 1343. Civil Rights and elective franchise"

(b) Delete the period at the end of paragraph (3) and insert in lieu thereof a semicolon.

(c) Add a paragraph as follows:

"(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote."

TITLE VI—PROTECTION OF MEMBERS OF ARMED FORCES

SEC. 601. Section 1114 of title 18, United States Code, is amended by striking out the words "man of the Coast Guard," and inserting in lieu thereof the words "uniformed members of the Army, Navy, Air Force, Marine Corps, or Coast Guard,".

TITLE VII—SEVERABILITY

SEC. 701. If any provision of this Act or the application thereof to any person or circumstances 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.

UNITED STATES SENATE,
COMMITTEE ON FOREIGN RELATIONS,
February 13, 1957.

HON. THOMAS C. HENNINGS,
Chairman, Subcommittee on Constitutional Rights,
United States Senate, Washington, D. C.

DEAR SENATOR: Thank you for inviting me to testify before your subcommittee tomorrow when hearings begin on the civil-rights bills. I deeply regret that previous commitments require me to be away from Washington on business tomorrow and Friday. I hope that I may be able to appear before the subcommittee in person before it concludes the hearings.

Meanwhile, I should like to request that this letter and the attachments be made a part of your record of hearings.

Pending before the subcommittee are the following civil-rights bills which I have introduced with several cosponsors:

S. 500. A bill to protect the right to political participation, and prohibiting any intimidation, coercion, or other interference with the right to vote.

S. 501. A bill to establish a bipartisan Commission on Civil Rights in the Executive Branch of the Government.

S. 502. A bill to establish a Civil Rights Division in the Department of Justice, headed by a new Assistant Attorney General.

S. 504. A bill to extend to members of the Armed Forces the same protection against bodily attack as is now granted to personnel of the Coast Guard.

S. 505. A bill to protect persons within the United States against mob violence or lynching.

S. 508. A bill to strength existing civil-rights statutes.

S. 509. A bill to strengthen the criminal laws relating to peonage, slavery, and involuntary servitude.

S. 570. An omnibus bill including all the above measures in one general measure.

Senate Concurrent Resolution 5. A concurrent resolution to establish a Joint Committee on Civil Rights.

Attached are statements analyzing each of these bills.

I want to emphasize that I have listed first the bill to protect the right to vote, because it is becoming increasingly clear that this is the key to all of the rest of our human-rights objectives.

While all of these bills are desirable, and while it is not up to me to assign priorities, nevertheless I do want to say that the first five can, and should, be enacted by this Congress. In addition to the right-to-vote bill, these are also of timely importance: The bipartisan commission bill, the civil-rights division bill, the Armed Forces antidiscrimination bill, and the antilynching bill.

For the moment, let me only add this: No conscientious observer who has ever examined the American scene has failed to put his finger on our greatest national weakness—the gap between our pretensions and our performance in the field of civil rights. We know that our Constitution guarantees full equality of rights and opportunities to Americans of every race, color, religion, and national origin. We know that proposed legislation to assure to every American his constitutional rights has been introduced in Congress after Congress, only to die in committee, on the calendar, or by the veto of the filibuster.

I am convinced, however, that we are coming to realize that a Congress which continues to be unresponsive to the greatest moral demand of our generation is an irresponsible Congress. We are coming to realize that, to the degree that procrastination, temporizing, delays, and obstruction continue, we are convicting ourselves of hypocrisy. We are coming to realize that the enemies of society are not those who promote the processes of freedom but those who try to block them.

Your subcommittee now has the opportunity, if it will only seize it, to initiate the first meaningful civil-rights legislation in 80 years. Despite the honest differences of opinion among us, I am convinced that the subcommittee will do its part and that the Congress itself will follow.

Best wishes.

Sincerely yours,

HUBERT H. HUMPHREY.

[S. 500. A bill to protect the right to political participation, and prohibiting any intimidation, coercion, or other interference with the right to vote]

I. STATEMENT BY SENATOR HUBERT H. HUMPHREY, OF MINNESOTA, ON THE BILL TO PROTECT THE RIGHT TO VOTE

Violence, threats, fraud, coercion, other forms of terrorism, boycotts, and discriminatory qualifications are today successfully disfranchising large numbers of American citizens. Well-documented cases have been publicly reported within the past year, cases involving a pattern of threats from physical attack to loss of jobs against Negroes who exercise their right to vote. As a penalty for voting, these threats have included discrimination in hiring or tenure; discrimination in regard to the withdrawal or granting of a business franchise or other benefit; efforts to cause an employer or principal to discriminate against an employee or agent to discourage the employee or agent from voting; boycotting of a business firm to encourage the firm to discourage its employees in exercising their right to vote; discharging or otherwise discriminating against any person because such person has encouraged others to vote.

The results have been to contribute to the great imbalance in the value of a vote cast in one section of the country as against another section. The extent of the limitation of the franchise is illustrated by the testimony of Assistant Attorney General Olney before the Senate Subcommittee on Privileges and Elections on October 10, 1956. Mr. Olney cited illegal practices by voting officials in Onachita Parish, La., acting in conjunction with local white citizens councils. In the course of several months in 1956, over 3,000 of the approximately 4,000 Negro voters in this particular parish were removed from the voting list.

The Jackson Daily News of December 18, 1956, carried a story of a plan by the white citizens councils to extend this program to other sections of the State and thereby clear Negroes from the voting lists. According to this report, 11,000 Negro voters were removed from the voting lists in northern Louisiana. A leader of the State's white supremacy movement was quoted as promising that a new purge would begin on January 1, 1957.

A more direct example of effective disfranchisement by intimidation occurred in January 1956 when a group of 12 negroes registered to vote in Liberty County, Fla. They were the first Negro voters to register in that county. Before a week elapsed, the homes of some of these citizens were shot into and crosses were burned throughout the area in which they lived. As a result of this intimidation, none of these new registrants voted.

These instances are not unique. Yet in these and in similar instances the Department of Justice has been powerless to act under existing law, beyond

investigations which may be conducted by the FBI. It is manifestly apparent that any new Federal legislation adopted must be broad enough to give the Attorney General discretion to intervene and the Federal courts jurisdiction whenever arbitrary and discriminatory devices are used to interfere with the right to vote. Obviously if the legislation is to be meaningful it must explicitly extend to voters in primary as well as general elections.

The proposed bill, originally requested by the Justice Department in the 81st Congress, is designed to do just this.

The Hatch Act (18 U. S. C. 594) now makes it a crime for anyone to intimidate or coerce an American citizen for the purpose of interfering with his right to vote as he wishes in elections for national office. This law was enacted in 1939, at a time when there was doubt in Congress as to the constitutionality of Federal regulation over nominating primaries. It is clear, however, today that the Federal Government does have the right to regulate the nominating primaries system. This has been so since 1941 and the case of *U. S.* v. *Classic* (317 U. S. 299). It is therefore essential that our laws be clear and unequivocal in this respect.

The proposed bill therefore provides that it is a crime to intimidate or coerce an American citizen and thus interfere with his right to vote in primary and special elections, as well as general elections for Federal office. The proposed bill also makes certain minor technical changes in the existing laws so as to declare it to be the unequivocal right of citizens to vote at any election without distinction as to race, color, religion, or national origin. Interfering with that right by anyone is made a crime. These changes have been requested by the Justice Department, which itself is responsible for carrying out the provisions of the law and protecting the rights of the citizens.

It is clear that discrimination against voters on the basis of race or color is a direct violation of the 15th amendment (*Smith* v. *Allwright* (321 U. S. 649)), and the equal protection clause of the 14th amendment (*Nixon* v. *Herndon* (273 U. S. 536); *Nixon* v. *Condon* (286 U. S. 73)). Our courts have continually ruled that discrimination in voting based on religion or national origin is arbitrary, unreasonable, and "by their very nature odious to a free people whose institutions are founded on the doctrine of equality."

The proposed bill further strengthens the existing civil-rights statutes insofar as voting is concerned by providing in addition to criminal penalties that the party whose voting rights are interfered with can bring a suit for injury against the person or persons who interfered or attempted to interfere with his right to vote. Another most important provision of this bill would authorize the Attorney General to seek injunctive relief in Federal court to prevent violation of the law or provide relief if violations take place. This would put a discretionary burden of protecting a citizen's right to vote directly upon the proper agent of the Federal Government rather than upon the individual citizen, who is often subject to local pressures. This is a bill, similar to S. 903 of the 84th Congress, which was favorably reported by the Senate Subcommittee on Constitutional Rights in 1956.

[S. 501. A bill to establish a bipartisan Commission on Civil Rights in the executive branch of the Government]

II. Statement by Senator Hubert H. Humphrey, of Minnesota, on the Bill To Create a Commission on Civil Rights

There is an urgent necessity for Congress to establish a permanent, bipartisan, regionally representative Federal Commission on Civil Rights to make continuous appraisals and to recommend action with respect to civil rights problems.

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. Yet, 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.

This gap was noted in the report of the President's Committee on Civil Rights which called for the establishment of a permanent Commission on Civil Rights in the Executive Office of the President.

Such a Commission would inquire into and give guidance in specific trouble areas as well as in broad problems and would make recommendations for legis-

lative and executive action. It would have subpena powers but not regulatory or enforcement authority.

Bills to establish such a Commission have been pending in the Congress since 1948.

The bill I offer today is a revised version of S. 900 which I sponsored in the 84th Congress. It may be summarized as follows:

1. There is congressional finding that civil rights of some persons today are being denied, abridged, or threatened, and that to protect these rights the executive and legislative branches must be continuously informed concerning the denials, abridgments, or threats.

2. Hence a five-man Commission on Civil Rights is set up in the executive branch, appointed by the President, with the protection that these appointments are to be made by and with the advice and consent of the Senate. Certain Commission operating procedures and financial compensation are set out in the bill. A full-time staff director and secondary personnel are authorized.

3. The duties of the Commission are essentially informative; to gather authoritative information concerning developments in the civil-rights field; to appraise from a civil-rights perspective current policies and activities of the Federal, State, and local governments, and of private individuals and groups; to assist States, counties, municipalities, and private agencies in conducting civil-rights studies; to make an annual report to the President and to the Congress with recommendations for action.

4. The Commission may constitute advisory committees and is expected to consult with representatives of State and local governments as well as private organizations.

5. The Commission is given subpena power to require the production of evidence relating to its studies or investigations. Any refusal to obey a subpena is punishable by contempt procedure in Federal district court.

Until last year, no such bill was brought to the floor of either House for a vote. When the House acted on H. R. 627, it did adopt a measure which has some of the aspects of the bill I propose today. I believe the present version is preferable however, for several reasons. Among them are these: (1) H. R. 627 would have established a Commission only for a period of 2 years; today's bill would establish it on a continuing, permanent basis.

(2) Under H. R. 627 the Commission would investigate denial of the right to vote, unwarranted economic pressure and denial of equal protection of the laws; under today's bill the investigations could be broader, touching on all aspects of civil rights. (3) Under H. R. 627 the Commission would report only to the President; under today's bill it would also recommend legislation to Congress.

The bill I propose today is a very meaningful one to me personally. Since it would be set up primarily as an advisory Commission, it is not at all to be confused with FEPC. It is a Commission patterned after the Mayor's Council on Human Relations which I established while I was mayor of Minneapolis and which is still operating successfully. I consider it to be one of the factors in changing Minneapolis from what Carey McWilliams in 1945 called "the capitol of anti-Semitism in America" to the city which received the annual Brotherhood Award of the National Conference on Christians and Jews in 1948. It is interesting to note that our mayor's commission continues to function in Minneapolis even though we have an FEPC in the city. The idea for such a commission, by the way, was supported by the old Truman Commission on Civil Rights.

On occasion I have had a chance to discuss with, or send, this bill to representative Southern editors. I have had an excellent and affirmative response from them. The long-term, essentially voluntary gradualist approach appeals to them. The necessity for Senate confirmation of the appointees to the Commission should result in a Commission representing many viewpoints.

The provision contemplating bipartisan, local, and regional consultation should also help assure that the Commission would approach its business from a serious but sympathetic perspective, recognizing that the problems which it is called upon to meet are more difficult in some areas of the country than others.

It seems to me that this is a moderate proposal upon which many Senators of varying convictions might agree.

[S. 502. A bill to establish a Civil Rights Division in the Department of Justice, headed by a new Assistant Attorney General]

III. STATEMENT BY SENATOR HUBERT H. HUMPHREY, OF MINNESOTA, ON THE BILL TO CREATE A CIVIL RIGHTS DIVISION

Recent events have made it more than obvious that we need a statutory Civil Rights Division within the Department of Justice, headed by an Assistant Attorney General, with authority to protect the civil rights in all sections of the country.

The need to strengthen the machinery of the Federal Government to provide for more effective enforcement of civil rights statutes was emphasized in the historic Report of the President's Committee on Civil Rights during the Truman administration. At the moment, responsibility for the enforcement of existing civil rights laws is vested in a nonstatutory Civil Rights Section of the Criminal Division of the Department of Justice. It has proved ineffective in the face of flagrant civil rights violations. The Civil Rights Section must be elevated to divisional status and given the prestige, the resources, and the authority necessary for the protection of civil rights.

President Truman's Committee urged as its first recommendation, the creation of a Civil Rights Division in the Department of Justice, with regional offices, a sufficient appropriation to enable the division to engage in extensive research and to act more effectively to prevent civil rights violations, and increase investigative action in the absence of complaints, and a greater use of civil sanctions.

Legislation to accomplish these purposes has been before the Congress continually since 1948. No such legislation was ever brought to the floor of either House for debate and vote, until 1956.

The provisions of the bill I introduce today spell out in detail the proposal which was incorporated in H. R. 627 last year. This bill is similar to S. 902 which I introduced in the 84th Congress, as well as to its earlier counterparts in previous Congresses. S. 902 was favorably reported by the Senate Subcommittee on Constitutional Rights in the 84th Congress. Such legislative encouragements from last year lead me to hope for effective action on this proposal this year.

[S. 504. A bill to extend to members of the Armed Forces the same protection against bodily attack as is now granted to personnel of the Coast Guard]

V. A STATEMENT BY SENATOR HUBERT H. HUMPHREY, OF MINNESOTA, ON THE BILL TO PROTECT MEMBERS OF THE ARMED FORCES AGAINST DISCRIMINATORY BODILY ATTACK

Not long ago the papers reported the beating of Airman Paul Ferguson at New Albany, Miss., by police officers and a bus driver. Similar instances of attack on our servicemen, motivated by racial intolerance, have occurred in sufficient numbers to warrant Federal action.

The proposed bill is identical to H. R. 5205 of the 84th Congress which passed the House of Representatives in January 1956, and was favorably reported by the Senate Subcommittee on Constitutional Rights last spring. The bill would amend 18 U. S. C. 1114 to include members of the Armed Forces under its protection. The present statute makes it a Federal criminal offense to murder or assault the Government personnel named herein while they are in the performance of their duties. The proposed bill would extend the protection, presently guaranteed to Coast Guard personnel, to all members of the Armed Forces.

In no single area where discrimination presently occurs does the Federal Government owe a more distinct obligation than in the protection of its servicemen and women. Nowhere is racial violence a more direct insult to American democracy than here. Nowhere is the necessity for Federal action more obvious and impelling.

[S. 505. A bill to protect persons within the United States against mob violence of lynching]

VI. STATEMENT BY SENATOR HUBERT H. HUMPHREY, OF MINNESOTA, ON THE BILL TO PROTECT AGAINST LYNCHING

What has been done in Congress to make lynching and other assaults by public officials or private citizens, acting either in concert or individually, on persons or property because of race, color, religion, or national origin, a Federal crime?

Legislation to make lynching a Federal crime was killed by filibuster in 1922. This matter has been before Congress continually since that time but has not been brought to a vote in the Senate.

That the old style of lynch-type action is not dead (i. e., removal of a prisoner from jail and inflicting violence on him) has recently been illustrated in the Jesse Woods case in Florida. According to reports, Woods was removed in October 1956 from jail in Wildwood, Fla., by a mob, taken to an isolated spot, and flogged. Fortunately, he was not killed.

Organized mob violence and terror of the Ku Klux Klan variety, in collusion with enforcement officials, are reappearing in new forms. The modern-day lynchers organize economic boycotts and reprisals, or bomb or otherwise injure individuals who do not conform to established patterns in the community.

Examples of the worst of these incidents are the George W. Lee, Lamar Smith, and Emmett Till murders in Mississippi, and the wounding of Gus Courts in that State.

Each legal victory by Negro citizens brings a series of bombings or other violence by antidemocratic forces. The total is too large to enumerate, but a listing of some follows:

On Christmas 1956, in the evening, the home of Rev. F. L. Shuttleworth in Birmingham was bombed and his children were injured. Reverend Shuttleworth is the leader of the Alabama Christian Movement for Human Rights.

Two days prior to this, mobsters had fired into the home of Rev. Martin Luther King, the leader of the Montgomery bus boycott.

In August 1956, the home of Lutheran minister, Rev. Robert Graetz, a sympathizer with the Montgomery bus boycott, was bombed.

In August 1956, the home of Booker T. Gulley, in Mobile, Ala., was burned after it had previously been blasted by shotgun fire. Mr. Gulley had moved into a previously all-white section of town.

A similar incident occurred in Cleveland, Ohio, on January 3, 1956, when the home of Attorney John G. Pegg was bombed. No successful prosecutions have taken place in any of these cases, either by State or Federal Governments.

It is essential that antilynching legislation apply in all circumstances where the violence is precipitated because of race, color, religion, or national origin, and not just in those instances where law-enforcement officials are involved. Otherwise, acts of violence by private citizens will continue to go unpunished, and many of our citizens will remain inadequately protected.

The bill I now introduce is a revised version of S. 900 which was favorably reported by the Senate Subcommittee on Constitutional Rights in 1956. It is designed to make it a criminal offense, punishable by a sentence up to 20 years, for 2 or more persons to commit violence on a person because of his race, creed, color, national origin, ancestry, language, or religion, or for the purpose of punishing such person for alleged crime. It also makes it a criminal offense for any governmental officer charged with the custody of a prisoner to neglect to protect such prisoner or to fail to apprehend or prosecute any member of a lynch mob. It authorizes the Attorney General to investigate violations of the act. It provides civil remedies for the victim or his next of kin against lynch-mob members.

[S. 508. A bill to strengthen existing civil-rights statutes]

X. STATEMENT BY SENATOR HUBERT H. HUMPHREY, OF MINNESOTA, ON THE BILL TO STRENGTHEN EXISTING CIVIL-RIGHTS STATUTES

This bill is identical to S. 905 of the 84th Congress. The need to enlarge the scope of Federal legislation protecting the rights of individuals to liberty, security, and citizenship is very clear. This can be achieved by enacting new legislation, and it must also be achieved by strengthening existing civil-rights laws. One such law to be strengthened is a criminal-conspiracy statute (18 U. S. C.

241) which has been used to protect rights secured by the Federal Government against encroachment by private individuals and public officers. Section 201 of our bill is designed to achieve that effect. It does so by extending the protection of the Federal Government to any "inhabitant" of the United States, not just a "citizen" alone. Our courts have ruled (*Baldwin* v. *Franks* (120 U. S. 678)) that an alien does not come within the protection of the statute. In deciding that case the Court stated:

"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."

The amendment which this bill proposes would bring the language of the statute into conformity with other supplemental protective statutes (18 U. S. C. 242). Under the broader statutes, the courts have already decided (*United States* v. *Classic* (313 U. S. 299)) that an inhabitant is protected from interference by a State official in his constitutionally protected right to vote in a congressional election or primary. There is more than the need for conformity to support this section, however. The protection of inhabitants is a well-established public policy of our country. We, in fact, subscribed to that policy in the United Nations Charter to promote respect for the observance of human rights and fundamental freedoms for all.

This bill would make a further change in the existing statute by protecting inhabitants not only when their Federal rights are infringed upon as a result of the conspiracy but also where the infringement is performed by persons acting individually. Whenever a person enjoins, oppresses, threatens, or intimidates any inhabitant of the United States in the free exercise or enjoyment of his rights and privileges, that inhabitant should be protected by our laws.

Our bill would also plug gaps in the existing laws insofar as civil remedies to the aggrieved are concerned. The present statute (sec. 47, title 8) appears to provide a civil remedy whenever a citizen's rights are interfered with as a result of a conspiracy. Even this remedy is inadequate, as demonstrated by a recent Supreme Court decision (*Collins* v. *Hardyman*, June 4, 1951). It appears to me, and I am pleased to report that this and the other recommendations of the bill apparently have the support of the Department of Justice, that a civil remedy should be provided the injured person, either where he has been the victim of a conspiracy or the victim of individual action to interfere with his rights and privileges as an inhabitant of the United States. Such an individual, therefore, should have the right to sue those found guilty of violating the law, whether the violators are public officials or private citizens. These suits should be brought in the Federal courts or appropriate State courts no matter what the sum of money involved in the controversy.

One other question has been raised by the courts (*Screws* v. *United States* (325 U. S. 91)) with regard to the rights, privileges, and immunities which inhabitants of the United States should enjoy. The courts have held (*Pullen* v. *United States* (164 F. (2d) 756)) that our statutes protect inhabitants only against being deprived of their constitutional rights "willfully." The proof of a general "bad" purpose alone may not be enough. We therefore consider it essential to enumerate in some detail some of the rights to be protected by our laws. All of these rights have already been sustained by the courts and are not new. The rights we desire specifically to set forth follow:

1. The right to be immune from exaction of fine without due process of law. (*Culp* v. *United States* (131 F. (2d) 93).)

2. The right to be immune from punishment for a crime except after a fair trial and confession after due process of law. (*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).)

3. The right to be immune from physical violence applied to compel a confession of a crime or to exact testimony (*Chambers* v. *Florida* (309 U. S. 227); *United States* v. *Sutherland* (37 F. Supp. 344).)

4. The right to be free of illegal restraint such as being detained by a sheriff without jurisdiction. (*Catlette* v. *United States* (132 F. (2d) 902); *United States* v. *Trierweiller* (52 F. Supp. 4).)

5. The right to protect the person and property without discrimination by reason of race, color, or national origin. (*Catlette* v. *United States; Yick-Wo* v. *Hopkins* (118 U. S. 35).)

6. The right to vote as protected by Federal laws. (*United States* v. *Classic* (313 U. S. 299); *United States* v. *Saylor* (322 U. S. 385); *Smith* v. *Allwright* (321 U. S. 649).)

[S. 509. A bill to strengthen the criminal laws relating to peonage, slavery, and involuntary servitude]

XI. STATEMENT BY SENATOR HUBERT H. HUMPHREY, OF MINNESOTA, ON THE BILL TO STRENGTHEN THE LAWS RELATING TO CONVICT LABOR, PEONAGE, SLAVERY, AND INVOLUNTARY SERVITUDE

The bill I send to the desk is identical to S. 904 of the 84th Congress. I earnestly hope that this measure will achieve the merited attention which it has been denied in the past.

During the fiscal year ending June 30, 1950, the Department of Justice received 85 complaints concerning possible peonage and involuntary servitude. I have not checked to see what the present rate of complaints is, but I have reason to believe that the number of complaints has not diminished in recent years. Peonage, of course, is a form of unvoluntary servitude rising out of a payment of a debt. It is essential that our laws be strengthened so that this form of involuntary servitude will be eliminated once and for all from our society. This is certainly the intent of the 13th amendment to our Constitution.

Our existing laws (secs. 1581, 1583, and 1584 of title 18, U. S. C.) declare the following to be a crime: Holding or returning persons to conditions of peonage; arresting persons with the intent of pressing them or returning them to conditions of peonage; kidnaping, arresting, or carrying away persons with the intent that they be sold into involuntary servitude or held as slaves; enticing, persuading, or inducing persons to go on board vessels with the intent that they be made or held as slaves; and knowingly and willfully holding persons to involuntary servitude or selling a person into any condition of involuntary servitude.

There are two basic changes which must be made to strengthen these laws. First, it is essential to make clear that to hold an individual in involuntary servitude is punishable. Secondly, it is important that not only the acts described above be considered criminal, but an attempt to commit the acts be in itself criminal. Every human being must have the right to be protected in this most vital area of his personal security and human dignity.

During the 82d Congress I was chairman of the Senate Subcommittee on Labor and Labor-Management Relations. We had brought to our attention specific evidence of peonage which our staff investigated. The staff informed me that the persons reduced to peonage are impoverished, uneducated colored men, and that all persons having knowledge of the circumstances surrounding the peonage are for one reason or another extremely reluctant to discuss it.

The system apparently calls for certain law-enforcement officers to release prisoners to the custody of employers when theose employers pay the fine or post the bond necessary. The prisoners remain with their employers until the fine is repaid through payroll deductions. When the bond is posted, employment continues until the time of trial. If the accused leaves employment before the time of the trial, the bond is withdrawn and the accused is again put in jail.

This is an outrageous state of affairs. There is evidence of conspiracy with police officials which the Justice Department must investigate. Our laws must be strengthened to deal with this problem, and our enforcement officers must be reawakened to the need for firm and serious activity.

[S. Con. Res. 5. A concurrent resolution to establish a Joint Committee on Civil Rights]

VII. STATEMENT BY SENATOR HUBERT H. HUMPHREY, OF MINNESOTA, ON THE RESOLUTION TO ESTABLISH A JOINT COMMITTEE ON CIVIL RIGHTS

The concurrent resolution I now submit is similar to Senate Concurrent Resolution 8 of the 84th Congress. It would establish a Joint Congressional Committee on Civil Rights. Its purpose is to have the joint committee make and conduct a study on matters related to civil rights and civil liberties, to study means of improving responsibility for and enforcement of civil rights; and to advise with the committees of the Congress who have the legislative responsibilities relating to this vital area.

The joint committee would not be a legislative committee, but it would have the authority to hold whatever hearings it deems necessary with the power of subpena to carry out its functions.

Its functions would not only be be advisory with regard to the Congress and its legislative committees but it would also have the function of consulting with representatives of State and local governments and with private organizations vitally interested in the preservation of human rights.

The purpose of the resolution is to help highlight congressional responsibility in this crucial area.

AMERICAN FEDERATION OF LABOR AND
CONGRESS OF INDUSTRIAL ORGANIZATIONS,
Washington, D. C., February 14, 1957.

HON. THOMAS C. HENNINGS, JR.,
Senate Office Building, Washington, D. C.

DEAR SENATOR HENNINGS: I am enclosing herewith my statement on behalf of the AFL-CIO in connection with the current civil-rights hearings being conducted by the Subcommittee on Constitutional Rights of the Senate Judiciary Committee. I request that this statement be made a part of the proceedings of the hearings.

You are aware, I am sure, of the deep interest which the AFL-CIO has in the enactment of meaningful civil-rights legislation. Experience has demonstrated, unfortunately, that such legislation has failed of enactment not because of the merits of the case against enactment but because of the great difficulties involved in defeating the obstructionist tactics of the opposition. Because of the great need to complete the current hearings as expeditiously as possible, the AFL-CIO is forgoing the privilege of asking for a personal appearance before your committee.

In forgoing a personal presentation, however, we should like to make one reservation. There has been submitted to the Senate by Mr. Goldwater, of Arizona, a proposed amendment to S. 83 which would make the so-called right to work one of the civil rights covered by the proposed legislation. This is so obviously unrelated to the purposes of civil-rights legislation as to suggest a willful desire to hamstring the civil-rights deliberations and thus prevent any action. Clearly, the Goldwater proposal properly belongs before the Labor and Public Welfare Committee for consideration along with other proposals for the amendment of the Taft-Hartley Act.

If in the course of the present hearings there is presented a defense of the Goldwater proposal and there develops any significant consideration thereof, the AFL-CIO wishes to reserve the right to present direct testimony to show how irrelevant and how vicious the proposal is. Furthermore, if the subcommittee does give serious consideration to such an extraneous issue, then we believe that it should consider another matter with real civil-right implications. I refer to the violence being visited upon representatives of labor organizations in the exercise of their constitutional rights to freedom of speech and assembly, frequently with the help of local officials. Our only reason for not pressing this matter at this time is the need to expedite consideration of and action on the bills now pending before you.

You and the members of your committee are to be commended for proceeding so early in the session in this vital matter.

Sincerely yours,

ANDREW J. BIEMILLER,
Director, Department of Legislation.

STATEMENT OF ANDREW J. BIEMILLER, DIRECTOR, DEPARTMENT OF LEGISLATION, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS

The American Federation of Labor and Congress of Industrial Organizations takes this opportunity to express its great satisfaction at the speed at which the Subcommittee on Constitutional Rights of the Senate Judiciary Committee has proceeded to consider and act upon civil-rights legislation in the 85th Congress. The chairman of the subcommittee, the Honorable Thomas C. Hennings, Jr., of Missouri, and the other members of the subcommittee are to be commended for this determination to bring to a successful conclusion this very vital piece of unfinished business.

Civil-rights legislation has been unfinished business for altogether too long a time. The Subcommittee on Constitutional Rights voted out four civil-rights bills on March 2, 1956, but the full committee never took any action on these bills or on the administration proposals which were made following the actions of the subcommittee. When the House-passed bill covering the administration

proposals, H. R. 627, came over to the Senate on July 23, it was referred to the Judiciary Committee and there it lay pigeonholded until the end of the session.

The AFL–CIO expresses its earnest hope that the Senate will not again in 1957 be the burying ground for civil-rights action. This need not be so if the preponderant majority of the Senate which favors civil-rights legislation will make a determined effort to see the fight through once and for all. If necessary, the Senate must be prepared to break a filibuster. Let us at long last have a showdown on the merits of civil-rights legislation—not on parliamentary maneuvering skill.

During the first week of the 85th Congress there was a hopeful sign that the Senate would succeed in doing in 1957 what the Senate has been prevented from doing for too many years. The near doubling in just 4 years of the number of Senators ready to change rule 22 is an indication of the strong support for action which has developed. The very wide sponsorship of civil-rights bills is another indication of the support.

What possible excuse can there be for further failure to enact some meaningful civil-rights legislation? We have just gone through a national political campaign. Both major political parties, the President of the United States, and the vast majority of all those elected to the Congress in 1956 have pledged themselves to work for the enactment of such legislation.

The Democratic platform of 1956 said, in part:

"The Democratic Party is committed to support and advance the individual rights and liberties of all Americans. Our country is founded upon the proposition that all men are created equal. This means that all citizens are equal before the law and should enjoy all political rights. They should have equal opportunities for education, for economic advancement, and for decent living conditions * * *.

"The Democratic Party pledges itself to continue its efforts to eliminate illegal discriminations of all kinds, in relation to (1) full rights to vote, (2) full rights to engage in gainful occupations, (3) full rights to enjoy security of the person, and (4) full rights to education in all publicly supported institutions."

The Republican Party platform of 1956 said, in part:

"We support the enactment of the civil-rights program already presented by the President to the 2d session of the 84th Congress * * *.

"The Republican Party has unequivocally recognized that the supreme law of the land is embodied in the Constitution, which guarantees to all people the blessing of liberty, due process, and equal protection of the laws. It confers upon all native and naturalized citizens not only citizenship in the State where the individual resides but citizenship of the United States as well. This is an unqualified **right, regardless of race, creed, or color."**

In his state of the Union message earlier this year, the President reaffirmed his campaign pledges by calling upon the Congress once again to enact civil-rights legislation which he had recommended to the 84th Congress. In this message, he stated:

"Steadily we are moving closer to the goal of fair and equal treatment of citizens without regard to race or color. But unhappily much remains to be done.

"Last year the administration recommended to the Congress a four-point program to reinforce civil rights. That program included:

"(1) Creation of a bipartisan commission to investigate asserted violations of civil rights and to make recommendations;

"(2) Creation of a Civil Rights Division in the Department of Justice in charge of an Assistant Attorney General;

"(3) Enactment by the Congress of new laws to aid in the enforcement of voting rights; and

"(4) Amendment of the laws so as to permit the Federal Government to seek from the civil courts preventive relief in the civil-rights cases.

"I urge that the Congress enact this legislation."

The AFL–CIO expresses the hope that the Senate will proceed expeditiously to adopt at the very least the recommendations outlined in the President's message—recommendations which coincide with the action taken by the House last year in H. R. 627 and now included in S. 83. Certainly the needs in 1957 are no less than they were a year ago.

We do not intend to burden the record with information or augmentation which duplicates the detailed material already available to the committee. We wish, however, to make several observations regarding the AFL–CIO's attitude about the general problem of civil rights and the overall program needed to help solve this problem.

The AFL-CIO is fully aware of the fact that no laws can by themselves wipe out prejudice and bigotry. We cannot by law decree fairness and brotherhood and equality. There must be personal readjustment in the hearts and minds of our people before all traces of bigotry are eliminated. But there is much which can and should be done both by voluntary organizations and by government to make that personal adjustment as rapid and as meaningful as possible. Prejudice and bigotry are personal, subjective things. But discrimination, segregation, lawlessness, and inequality are social acts—and these society has a right and a duty to eliminate as rapidly and as thoroughly as possible.

The American labor movement—now united in the AFL-CIO—has taken a clear stand on this great moral question of our times. Before they merged, the AFL and the CIO and many of their affiliated national and international unions testified frequently before congressional committees on many aspects of the civil-rights problem. Since 1955, when the two great labor organizations merged, we have spoken with a single voice. The resolution on civil rights adopted at the historic merger convention made it clear that the AFL-CIO will work vigorously for the extension of human rights both within its own organizations and in society generally. That resolution stated, in part:

"The AFL and the CIO have always believed in the principle and practice of equal rights for all, regardless of race, color, creed or national origin. Each federation has separately played a distinguished role in the continuing struggle to realize for all Americans the democratic rights promised to all by the Constitution of the United States.

"The AFL-CIO is similarly pledged and dedicated to promote and defend the civil rights of all Americans. Its constitution declares that one of its objects and principles is:

"'To encourage all workers without regard to race, creed, color or national origin to share in the full benefits of union organization.'

"Another such object and principle of the new Federation is:

"'To protect and strengthen our democratic institutions, to secure full recognition and enjoyment of the rights and liberties to which we are justly entitled, and to preserve and perpetuate the cherished traditions of our democracy.'

"Our constitution likewise provides for a 'committee on civil rights' which:

"'Shall be vested with the duty and responsibility to assist the executive council to bring about at the earliest possible date the effective implementation of the principle stated in this constitution of nondiscrimination in accordance with the provisions of this constitution.'

"Thus the AFL-CIO stands dedicated no less than its predecessors to bring about the full and equal rights for all Americans in every field of life."

Through the years, the labor unions have made a contribution toward greater understanding among people. Primarily, this has been done because of the very nature of unionism. As workers of all races and religions found it necessary and advisable to work together in seeking common solutions to common problems in the shop or the mill or the office, they soon acquired respect for one another based upon individual worth. Moreover, unions have undertaken specific programs designed to spread understanding.

Labor unions, of course, have not been alone in the effort at spreading understanding. Our churches and schools and fraternal organizations have all done their work. But the work of these groups and of individuals throughout the country must have the support of government. All branches of the Government must participate—executive, judiciary, and legislative. The fact is that in recent years the legislative branch has lagged behind the others in contributing to the solution of the problems. Although much can be, and has been done by the executive and judicial branches, there remains much which cannot be adequately done without legislative sanction not now explicitly stated.

The AFL-CIO, therefore, supports a comprehensive program of civil-rights legislation. The subcommittee print, which combines the provision of the bills voted out by the subcommittee in the 84th Congress and the provisions of S. 83 comes closer to meeting the many problems requiring action than does the President's program alone. Every part of the President's program has the endorsement of the AFL-CIO, but it would be wrong and misleading to say that this minimum program is more than just that—a minimum program. Certainly anything less than this would be totally and inexcusably inadequate.

We wish to comment briefly on the four parts of this minimum program.

1. COMMISSION ON CIVIL RIGHTS

It is proposed that there be created in the executive branch of the Government a Commission on Civil Rights whose purpose it shall be to (1) investigate allegations of deprivation of the right to vote and of unwarranted economic pressures by reason of color or race; (2) study developments which deny equal protection of the law; and (3) appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution.

We believe that such a Commission could perform a useful function if it were composed of eminent and public-spirited citizens and is adequately financed and adequately staffed. No stone must be left unturned in the work required to seek out answers to the many vexing problems with which we shall be faced even after the enactment of some substantive legislation. The existence of the Commission, however, must not be used to delay the passage of substantive legislation.

2. CIVIL RIGHTS DIVISION

It is proposed to create a special Civil Rights Division in the Department of Justice under the supervision of a special Assistant Attorney General.

It does not seem particularly important to us by what title the civil-rights office or unit goes, but if it is felt that such a provision in the legislation will help establish the importance and stature of such personnel or division, the Congress should adopt the proposal.

3. RIGHT TO VOTE

This proposal would give the United States clear authorization to take civil action to redress or prevent unconstitutional deprivation of the right to vote.

This is a vital significant proposal. The AFL-CIO strongly supports this recommendation, and believes that any civil-rights legislation which does not contain this provision would be meaningless.

In the final analysis, perhaps the most precious right of all in a democracy is the right to vote. With such a right adequately assured, all other rights are potentially assured. Nothing is more basic to democratic society than the power vested in the people to choose the men and women who will make the laws and operate the Government for the people.

Our Federal Constitution recognizes this basic right to vote in numerous ways. Article I of the Constitution gives Congress the power and duty to pass the laws necessary to protect elections for Federal office. The 15th amendment to the Constitution provides that the right of citizens of the United States to vote in State and local elections shall not be denied or abridged by the United States, or by any State on account of race, color, or previous condition of servitude. The 14th amendment, moreover, prohibits any State from making or enforcing laws which abridge the privileges and immunities of citizens of the United States and from denying them the equal protection of the law.

To carry out these purposes, the Congress years ago passed a voting statute which provides that all citizens shall be entitled and allowed to vote in all elections, State or Federal, without distinction based upon race or color. By this action, the Congress did intend to provide satisfactory protection for the right to vote.

The sad and obvious fact is, that the right to vote has not been adequately protected. Negroes especially have been deprived of the right to vote in many parts of this country. For trying, some have been mercilessly beaten, and some have been killed. Obviously, the present voting statutes have not been enough to guarantee this most precious right.

Principally, these statutes are inadequate because they limit the authority of the Department of Justice to criminal action alone. This is unsatisfactory (1) because of the reluctance of juries to act in this very sensitive area, and (2) because criminal action necessarily must follow the actual violation of these rights. The proposed legislation would give the Department of Justice clear authority to invoke civil remedies for the enforcement of voting rights. This would include the authority to apply to the courts for preventive relief.

The present laws are vague as to the right of an aggrieved individual to apply for preventive relief. In any case, this is a right which few persons would feel free to invoke on their own. The right of the Attorney General to seek injunctive relief, therefore, seems to us to be basic to any voting statute.

4. STRENGTHENING CIVIL-RIGHTS STATUTES

It is proposed here that the Congress should authorize the Attorney General to seek civil remedies in the civil courts for the enforcement of the present civil-rights statutes. At present, civil suits are possible only by the private persons who are injured by violation of the civil-right guaranties; criminal prosecutions may be instituted by the United States.

The AFL-CIO strongly supports this proposal. Practice has shown that neither civil suits by the aggrieved individual nor criminal suits by the Federal Government have been effective in the enforcement of the present civil-rights statutes.

Injured individuals are often not in a financial position to institute litigation to redress their own rights. Criminal prosecutions suffer from two difficulties: (1) The Constitution requires that such action be taken before a jury drawn from the locality in which the crime was committed; experience shows that in certain types of cases—not limited to civil rights—the local juries have been reluctant to act; (2) criminal prosecution tends to aggravate the very community tensions which gave rise to the civil-rights violation in the first place.

The Attorney General of the United States testified last year that he requires "authority to institute a civil action for preventive relief whenever any persons is engaged or about to engage in acts or practices which would give rise to a cause of action under the present provisions of the law." He further testified that such authority "would be more effective than the criminal sanctions which are the only remedy now available." The Congress should give him this authority.

OTHER CIVIL-RIGHTS NEEDS

We have commented briefly on 4 proposals which have already been enacted once by the House of Representatives by an overwhelming bipartisan vote and are now incorporated in S. 83. Certainly, there can be no reason for believing that any of these proposals will be considered less necessary by the 85th Congress than they were by the 84th.

As indicated at the beginning of this statement, however, the AFL-CIO considers this a minimum program.

The group of bills voted out by the Subcommittee on Constitutional Rights last year and reintroduced this year by the chairman of the subcommittee, Mr. Hennings of Missouri, Mr. O'Mahoney of Wyoming, and Mr. Langer of North Dakota (S. 427, S. 428, S. 429, and S. 468) would add significantly to the proposals included in S. 83. These additions, now incorporated in the subcommittee print, include provisions directed at mob violence and lynching and extension to Armed Forces personnel protection against bodily attack. Moreover, the subcommittee print would provide increased safeguards for Federal voting rights.

In addition to all of the foregoing, the AFL-CIO supports also the following measures:

1. A fair employment practice law assuring to all workers in interstate commerce equal opportunity without regard to race, creed, color, or national origin. (Such legislation is, of course, not within the jurisdiction of the Judiciary Committee. Bills toward this objective have already been referred to the Labor and Public Welfare Committee.)

2. An anti-poll-tax statute which will invalidate State laws which require the payment of a poll tax as a prerequisite in voting.

Early this month the executive council of the AFL-CIO reiterated its support for a meaningful civil-rights program by the unanimous adoption of a statement on civil rights, the text of which is appended hereto.

THE TIME IS NOW

In the foregoing statement, the AFL-CIO has indicated briefly its attitude toward some of the major proposals which have been offered to make a living reality of our professed freedoms for all of our people, not just those who happen to have the right color or right religion or right national origin. There are other proposals, too, which would receive the support of the labor movement. The crucial need of the hour, however, is action, meaningful action by Congress which will help create both the proper climate and the proper machinery for the further extension of basic civil rights.

This is truly a historic moment for America. Events of the last few years have confronted Congress with a decision it can no longer afford to postpone.

The executive branch for the past 10 years has been making some progress. The courts have spoken. The opponents of progress have, however, shown arrogant defiance. In doing so, they have not only put the issue of civil rights on trial; they have put the very prestige and honor of America itself on trial. The Congress must speak out; it must declare its support of our precious heritage of freedom and equality. It can do so by taking specific action to strengthen the hands of our Government in implementing the Declaration of Independence and the Constitution of the United States.

The challenge to the Congress stands on its own merits. But it cannot be forgotten that our actions in this area of civil rights has great significance beyond our own borders. Not only is it morally right that we should extend our freedoms to all Americans; it is also politically wise. The greatest single contribution we can make to winning lasting loyalty and cooperation from the peoples of Asia and Africa, the crucial areas of the world today, is to "practice what we preach."

Our fine preachments about "democracy" and "freedom" and "equality" will have real mening only as we make these goals truly meaningful for all Americans. Let us finish our job now.

Statement on Civil Rights

Resolution by the AFL–CIO Executive Council, Miami Beach, Fla., February 4, 1957

As the champion of freedom, of human rights, and of true democracy in the present-day world, American people and their Government have a special and urgent responsibility to extend equal rights and equal opportunity to all Americans in every field of life.

The AFL–CIO believes it is the first order of business of the 85th Congress to enact civil rights legislation in order to give practical application and the force and effect of statutory law to the basic rights guaranteed to every American by the United States Constitution and the Bill of Rights.

The pronouncements of the United States Supreme Court have left no lawful room for segregation because of race or color of children in our schools or of passengers in public transit. This is the law of the land.

It is now the corresponding responsibility of the legislative and the executive branches of our Federal Government to give this law full effect.

We call upon Congress to enact the following legislation making enforceable and more secure civil rights pledged and proclaimed by the United States Constitution.

1. In order to give full effect to the franchise as the fundamental right of citizenship, we call for a Federal anti-poll-tax law, invalidating State laws which require the payment of a poll tax as a prerequisite to voting.

The 15th amendment, affirming this right and giving specific power to the Congress to enforce it by appropriate legislation, was ratified and put into effect in 1870—87 years ago. Yet Congress has taken no action to override the State poll-tax laws which, though contrary to the Constitution, are still in effect in Alabama, Arkansas, Mississippi, Tennessee, Texas, and Virginia.

2. In order to give adequate Federal protection to the right to vote, there is also need for a law authorizing civil actions by the United States to redress or prevent any unconstitutional deprivation of the right to vote.

3. In order to give effect to the constitutional guaranty that no person shall be deprived of life, liberty, or property without due process of law, we call for a law making lynching a Federal crime.

4. We urge that the present civil rights laws be strengthened by authorizing the Attorney General to bring civil actions to present or redress certain acts or practices which violate existing civil-rights acts.

5. We ask that there be established in the Department of Justice a Civil Rights Division and that a position be established of an Assistant Attorney General for Civil Rights in charge of this Division. This provision is necessary to provide adequate review and enforcement machinery to enable the Federal Government to give effective protection to civil rights.

6. We call for the enactment by Congress of a permanent fair employment practices law assuring to all workers in interstate commerce equal employment opportunity without regard to race, creed, color, or national origin.

We strongly urge the Senate of the United States to give prompt consideration to the change in its rules to permit a majority of Senators present and voting to limit and close debate.

In addition, we call on the executive branch of the Government to utilize its full powers to overcome and to punish any unlawful attempts to block the effectuation of the Supreme Court decisions outlawing segregation in the schools, public conveyances, public recreation, and housing.

We have taken steps to give effect to the objective of the AFL–CIO Constitution "to encourage all workers without regard to race, creed, color, or national origin to share in the full benefits of union organization."

In our drive for civil rights, we are confident of winning wholehearted and wide support of the entire trade-union movement in America.

Senator HENNINGS. I now suggest that the committee recess to reconvene at 10 o'clock tomorrow morning.

(Whereupon, at 5 p. m., the committee recessed, to reconvene at 10 a. m., Saturday, February 16, 1957.)

CIVIL RIGHTS—1957

SATURDAY, FEBRUARY 16, 1957

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

The subcommittee met, pursuant to recess, at 10 a. m., in room P–63, United States Capitol Building, Senator Thomas C. Hennings, Jr., chairman of the subcommittee (presiding).

Present: Senators Hennings (chairman of the subcommittee), Ervin, Hruska, and Watkins.

Also present: Charles H. Slayman, Jr., chief counsel, Constitutional Rights Subcommittee; and Robert Young, staff member, Committee on the Judiciary.

Senator HENNINGS. The committee will please come to order.

I first want to express the thanks of the committee to the Attorney General and Mr. Olney and others who have taken the trouble to be here this morning.

Mr. BROWNELL. Mr. Barrett is here at the table with me this morning in place of Mr. Rogers who had to go to Chicago.

Senator HENNINGS. We are glad to have you too, Mr. Barrett, indeed.

I think Senator Ervin from North Carolina is about to engage in further interrogation of the Attorney General.

Senator ERVIN. I think I read to the Attorney General title 18, section 402, and I believe I read title 3691 of the United States Code. I am not certain about the last one.

(Discussion off the record.)

Senator ERVIN. I would like to read one other statute on this general subtitle 18 United States Code, section 3692:

> In all cases of contempt, arising under the laws of the United States governing the issuance of injunctions or restraining orders, in any case involving or growing out of a labor dispute the accused shall enjoy the right to a speedy and public trial by an impartial jury in the State and district wherein the contempt shall have been committed.
>
> This section shall not apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice nor to the misbehavior, misconduct, or disobedience of any officer of the court in respect to the rights, orders and processes of the court.

I believe, Mr. Attorney General, I have read you the general statutes governing the subject of contempt in the Federal courts and I draw these deductions from these statutes. First that as a general rule in civil contempts, that is contempts that involve an effort of the court to enforce the decree of the court, that the judge passes on the matter without an injury.

Second, as a general rule where the contempt constitutes a criminal contempt in the sense in which the act enjoined, which is alleged to have been violated, also constitutes a violation of a criminal statute of the State or the Federal Government, the accused has the right to a trial by jury and third, that the second general rule stated, that is one in reference to criminal contempts does not apply in an action which is brought in the name of the United States or in behalf of the United States.

Is that in your judgment a fair interpretation of the salient features of these statutes?

STATEMENT OF HON. HERBERT BROWNELL, JR., ATTORNEY GENERAL OF THE UNITED STATES, ACCOMPANIED BY WARREN OLNEY III, ASSISTANT ATTORNEY GENERAL; AND EDWARD L. BARRETT, JR., SPECIAL ASSISTANT TO THE ATTORNEY GENERAL—Resumed

Mr. BROWNELL. With this one addition I think, Senator, in the case of the suit brought by the United States it is in the discretion of the trial judge as to whether or not he shall impanel a jury to hear one or more issues of fact. With that exception I think I would agree with the statements that you have made.

Senator ERVIN. But that is a privilege which the party alleged to be in contempt cannot invoke as a matter of right.

Mr. BROWNELL. Not as a matter of right.

Senator ERVIN. It is in a sense a matter of grace or discretion.

Mr. BROWNELL. Discretion of the judge.

Senator ERVIN. Not as a matter of right?

Mr. BROWNELL. Yes.

Senator ERVIN. Do you see Mr. Attorney General, any valid reason for distinction between a case involving criminal contempt where it is brought in the name of the United States and one brought in the name of a private litigant in which case the essential point involved is the enforcement or vindication of the rights of private individuals.

Mr. BROWNELL. I think in the first place the very fact that Congress each time this has come up has made that distinction would indicate that in the judgment of the Congress there may be reasons for a separate rule and it occurs to me offhand that when the Government is involved that it is entirely appropriate to leave the matter to the discretion of the judge.

Senator ERVIN. Do you think there is any valid distinction where the action is in the name of the United States essentially for the benefit of the private individuals to deny the accused in the contempt proceeding the right to a trial by jury as a matter of right whereas he enjoys that right as a matter of right if it should happen the suit had been brought instead by the private parties for whose benefit the suit is in fact brought?

Mr. BROWNELL. It seems to me so, because in the case that would be brought by the Government for the benefit of one or more private individuals, there is in addition to the private right that is being enforced also a public right. That, I assume, is the reason why by

analogy they classified them with you might say the orthodox Government cases rather than with the private citizen cases.

Senator HENNINGS. Mr. Attorney General, isn't it further true that there is also the oath of the Federal officer?

Mr. BROWNELL. Yes; that is a good point to bring out, Mr. Chairman.

Senator ERVIN. What is the difference between the oath of the Federal officer and the oath of the attorney who represents a private citizen?

Mr. BROWNELL. Are you asking the chairman?

Senator ERVIN. I am asking you.

Mr. BROWNELL. I don't know the language is any different, but I think——

Senator HENNINGS. One covers a public responsibility and the other covers an obligation to a client.

Senator ERVIN. I am asking the difference in the oath because the oath the private attorney takes, he takes an oath to support the Constitution of the United States, the constitution of the State in which he practices and an oath to demean himself well and truly in his office as an attorney and it is identical with the oath taken by the public official except the public official in addition takes an oath that he will well and truly discharge the duties of his office.

Mr. BROWNELL. That's right. There is the additional oath. And finally too as has been said down through the years, I think, the obligation of the public official who is the law-enforcement officer for the Government is not only to see that the rights of the Government are protected, his client you might say but also that justice is done and that he has also a moral obligation, professional obligation to see to it that the rights of the defendants are protected in the proceeding, so that it is a very broad obligation.

Senator ERVIN. Isn't it the obligation of an attorney-at-law to well and truly demean himself in his office as an attorney and as an officer of the court and defend the Constitution of the United States and the constitution of the State, doesn't that impose great moral and legal obligations on him?

Mr. BROWNELL. Yes; I think it does. This is a broader matter, while the Government official does take a separate and official oath, so you might say there is even greater obligation, they both have important obligations and I wouldn't rest the distinction on that point.

Senator ERVIN. I wouldn't think it should rest on that point. I think the oath that the attorney takes is just as binding as the oath of the attorney who represents the prosecution or the Government even in a civil case.

So I don't believe that is a valid distinction. I don't see any reason for the distinction. If it is well to have a jury trial where a man is charged with contempt, criminal contempt, arising out of a civil action brought by an individual, there is in fact, in my judgment no justification for denying the same man a right to a trial by jury in an action of the same nature merely because it is brought in the name of the United States.

Mr. BROWNELL. Well, I would say this, Senator, in the first place Congress has made the distinction and every time it has come up has maintained the distinction; in the second place, in the 28 statutes I cited yesterday it worked very well over the years.

I have never heard any complaint about it and as far as I know everyone has been satisfied that the proper method to handle is the one that is used here, that is that the trial judge would have the discretion as to whether or not to impanel a jury to any one or more points that may be before him involved in the case.

Senator ERVIN. Is there not an anomaly however in the fact in all other instances that I know of when the Government comes into court it is bound by exactly the same rules as applied to any other litigant?

Mr. BROWNELL. I would think where public rights are involved you have very often different rules applying to Government. I think you will find the code studded with distinctions based upon that difference between public and private right.

Senator ERVIN. Of course, you do not think that my interpretation of these proposed amendments is correct, that these proposed amendments in effect would authorize a suit to enforce the personal constitutional rights of private individuals.

Mr. BROWNELL. I think it is only a partial statement of it. I find nothing wrong with the statement in itself except it does not also point out the other half of the picture which is that there's also a public right to enforce.

Senator ERVIN. In a sense the public may have a sentimental right.

Mr. BROWNELL. No, a legal right, a constitutional right.

Senator ERVIN. They would have a sentimental right to see that the Constitution is enforced but a constitutional right is personal in nature, isn't it, which can be waived by the private individual to whom it belongs; can it not?

Mr. BROWNELL. I would say there is a tremendous distinction between the public right and private right. It runs through our law and I think it touches almost every phase of the work we do in the Department of Justice.

Senator ERVIN. I was asking this specific question: Isn't a constitutional right of a private individual a personal right which he can waive?

Mr. BROWNELL. I think no.

Senator ERVIN. In other words you tell me that a man who is entitled to vote can't waive the right to vote?

Mr. BROWNELL. I think there are some that cannot be waived, Senator.

Senator ERVIN. The right to vote is one that can be waived; isn't It? The private individual is entitled to vote.

Mr. BROWNELL. He doesn't have to vote, no.

Senator HENNINGS. Isn't it true, Senator, that it isn't a right that is necessarily waived? I don't mean to correct your usage or engage in semantics, but the fact that he does not exercise the right does not necessarily mean that he waives the right. He still has the right. The right remains. The right may not be exercised.

Mr. BROWNELL. That's right. Here the public law enforcement officer has a duty to go ahead and enforce the Constitution and the laws even though the individual who might be directly affected by it doesn't want him to do so.

Senator ERVIN. Am I to infer from that that if these amendments were passed that the United States would be empowered to bring suits on behalf of people who didn't desire the suits to be brought?

Mr. BROWNELL. If there is a public right involved, it is the obligation of the Government official.

Senator ERVIN. What public right is involved in the question whether I, for example, wish to register and vote?

Mr. BROWNELL. You see, under our system of law if we find an unconstitutional system of discrimination against the right to vote based upon color, the way we bring that into court is to demonstrate—very often it is done by demonstrating in individual cases the effect of that system.

Now the permission of the private individual is not necessary in order for the Government to point out the effect of the unconstitutional system. I think that runs right through. For example, the antitrust law is one of the 28 statutes on the books now where this is done as a matter of routine.

The Government can go in to get an injunction against the fixing of prices or the allocating of territories, and, I point out, may have to subpena the witness, as a matter of fact as a hostile witness, to show that he is the victim of it, but nevertheless the Government, regardless of the attitude of the individual, has an obligation to enforce that law.

Senator ERVIN. Then it is your position if Congress approves these amendments in the form in which they have been drafted, the Attorney General can sue in the name of the United States for the vindication and enforcement of alleged constitutional rights of citizens who do not wish the suit to be brought.

Mr. BROWNELL. Yes; in exactly the same way that he does it in 28 other areas under statutes that Congress has passed and are on the books now.

Senator ERVIN. In other words a citizen does not have the right to refrain from asserting the right.

Mr. BROWNELL. Yes; he doesn't have to assert the right. He has the right as we said yesterday to bring his own individual suit but he cannot stop the public prosecutor from carrying out his own action.

Senator HENNINGS. If the Senator will yield, the distinguished Senator having been a judge and I having served a little time as a district attorney myself in a city, we all know that there were occasions when people certainly did not want to prosecute but we brought them in before the grand jury and they became State's witnesses. They had no option in the matter. They were put under their oath, gave their evidence, and were later brought before the Federal jury to give testimony. You know that is true, don't you, sir?

Senator ERVIN. I will respectfully submit to my distinguished friend and genial chairman that the illustration given by him is as different from the one that I am talking about as the gulf which yawns between Lazarus in Abraham's bosom and Dives in hell. A criminal prosecution is one that belongs to the government, the State government or the Federal Government as the case may be; isn't that right?

Mr. BROWNELL. Yes; for the enforcement of public rights.

Senator ERVIN. An individual can neither, well he can under our State law start one, but under the Federal law an individual doesn't even have the election to start of his own right a criminal prosecution, does he?

Mr. BROWNELL. That's right.

Senator ERVIN. That right belongs to the duly constituted officers of the Government or rather duty, I should say. On the other hand ordinarily a private right whether a right of an individual either under the Constitution or under the law is a personal right which belongs to him which he ordinarily can assert or refuse to assert at his instance, isn't that so?

Mr. BROWNELL. Yes, there are many cases, however, like the 28 already on the statute books where there are parallel public and private rights that grow out of the same set of facts, and the point that I think is important to get on the record here is the private individual by not following up his own priavte right in court cannot in any way interfere with the Government enforcing the law and enforcing the public right which grows out of those same facts.

Senator ERVIN. With reference to these 28 you cited yesterday, 28 statutes enacted by Congress which empower the Federal Government to seek injunctive relief against acts which also constitute crimes, did you not?

Mr. BROWNELL. Yes.

Senator ERVIN. I have a general familiarity with those statutes. I do not claim to be able at this moment to give a detailed analysis of them, but from my general knowledge of those statutes, I have the very deep impression that these two things are true with respect to each of those 28 statutes.

First, that none of them authorize the Federal Government to bring suit for injunctive relief to enforce a right which is essentially the right of a private individual without the consent of such private individual.

Second, that none of those statutes, rather than each of those statutes merely authorizes the employment of restraining orders and temporary injunctions to maintain the status quo existing at the time of the institution of the action or at the time of the hearing on the temporary injunction, and from my interpretation of these statutes, neither one of these, of those statements is correct with reference to these proposed amendments. I have no staff of lawyers but I would challenge the Department of Justice to point out to this committee at any time during the course of these hearings any one of those 28 statutes concerning which those 2 things I have enumerated are not true.

Mr. BROWNELL. Wouldn't now be a good time to do it?

Senator ERVIN. Yes, sir.

Mr. BROWNELL. I will accept that challenge, because I meet that problem every day in my practice here in the Department of Justice. It is the one with which I am most familiar and which has the greatest impact perhaps than any of them on public and private rights is in the field of antitrust laws where we have exactly this situation. The Congress has given the private individual the right to sue, to redress him if he as been, say, squeezed out of business by monopolistic practices, price fixing, allocation of territories. The law also imposes upon the Attorney General the obligation to enforce a public right in that area and penalize the person who has violated the antitrust laws, squeezed this person out of business, or in the alternative bring a civil action for an injunction. When that injunction action is brought to aid the private person, the court may grant a temporary

restraining order to preserve the status quo pending trial or it may enter a temporary or permanent injunction which would prohibit the commission again of the type of acts which the violator of the law has been found to be guilty of doing.

So that in both the respects that you have pointed out, the antitrust laws set up a system which is exactly the same that we now propose to set up in the area of civil rights.

Senator ERVIN. Of course the Government in that case is bringing an action to enforce a governmental right. Incidentally in enforcing the governmental right it may protect the private right.

Mr. BROWNELL. Just as it would here in the civil rights area.

Senator ERVIN. But can it bring an action for a right for the benefit of a private individual alone in an antitrust case without the consent of that private individual?

Mr. BROWNELL. It not only can but it does. Sometimes they have to subpena the private individual to come and he doesn't want the Government to do it.

Senator ERVIN. Does the statute say that in express terms?

Mr. BROWNELL. That certainly is the legal effect of it.

Senator ERVIN. You mentioned it the other day among these things about the National Labor Relations Board.

Mr. BROWNELL. Yes?

Senator HENNINGS. There is no statute in that case, it is a matter of procedure.

Senator ERVIN. In that case it says before the Government can act that it has to have the written consent of the man concerned. Here is the difference, I think, in your antitrust laws, your Government has undoubted power—the antitrust act as I understand it is valid only by virtue of the interstate commerce clause.

Mr. BROWNELL. That is the main constitutional power on which it is based.

Senator ERVIN. And Congress has express power under the Constitution to regulate interestate commerce.

Mr. BROWNELL. The decisions of the Supreme Court show that the Government has the constitutional power to act in the area of civil rights. The only thing is that now the only power we have is the criminal power. Now, we are asking the Congress expressly to give us the civil powers, but it is just as constitutional in the one case as it is in the other.

Senator ERVIN. You think there is no difference between the power of the Government to regulate interstate commerce and the power of the Government to enforce civil rights under the Constitution.

Mr. BROWNELL. Not so far as their constitutionality is concerned.

Senator ERVIN. And, of course, as far as the enforcement of the criminal laws, that is a Government matter in all cases where there is a valid exercise of that power with respect to the Constitution.

Mr. BROWNELL. That's right.

Senator ERVIN. So you and I, I think, disagree on this fundamental proposition that I entertain the opinion that the constitutional right of any citizen to vote is a personal right, which he can exercise or refrain from exercising at his election and I do not see how there is any authority in the Constitution to let the United States enforce a constitutional right of that nature without the consent of the party

aggrieved. That is a fundamental difference that we can argue and probably you would not convince me and I would not convince you, but that is my own honest opinion.

Now I want to call your attention again to the last statute, title 18, section 3692, providing that in all cases of contempt as I construe it whether civil contempt or criminal contempt, governing the issuance arising under the laws of the United States Government, the issuance of injunction. Maybe I better read the statute first before I attempt to give my interpretation:

> In all cases of contempt arising under the laws of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute, the accused shall enjoy the right to a speedy and public trial by an impartial jury in the State and district wherein the contempt shall have been committed—

and then a provision that does not apply, to contempts committed in the presence of the court or contempts arising out of misbehavior of Federal officers, officers serving process.

Do you agree or disagree with my interpretation of that statute, that it applies to all cases of contempt growing out of controversies involving labor disputes under the laws of the United States regardless of whether or not the contempt in question is a civil or criminal contempt?

Mr. BROWNELL. My offhand opinion would be yes. I might check that here. I don't think we have experts on labor law here this morning. Those prosecutions are brought in the first instance by another agency in the Government.

Senator ERVIN. I wouldn't hold you to it. After you investigate it and consider that and if you reach a different conclusion let the committee know.

Mr. BROWNELL. Very good.

Senator ERVIN. Do you see any reason for making a valid distinction in the case of criminal contempts between a person who does acts in violation of an injunction in a labor controversy and a person who does acts in violation of an injunction in an effort to discharge public duties as an official of a State?

Mr. BROWNELL. Well, let me answer it this way. In the first place Congress must have seen a difference, because as I say every time it has come up, they have considered the particular area where the statute would apply and then laid down the rule. In the labor area of course there is a tremendous amount of history back of that, of injunctive relief, and over the years it has been felt to be a specialized enough field so that special rules should apply.

I would not challenge that. I am not an expert in that field of the law, but just from my general reading I would say that the whole separate and distinct set of rules has been established in that labor area. The Taft-Hartley Act, the Norris-LaGuardia Act. I run into the thing this way, in the antitrust field there is a special exemption for labor union cases. So that I imagine research would show a real reason for the difference.

Senator HENNINGS. It goes back to the Wagner Act and Walsh-Healey Act and all of these various and sundry things that have come along in modern so-called labor-management relations.

Mr. BROWNELL. Y[illegible] there is enough of a special history in that area to perhaps justify a [illegible]cial statute.

Senator ERVIN. Injunctive relief in labor cases antedated the Wagner Act and Walsh-Healey Act and all these acts.

Mr. BROWNELL. Yes.

Senator ERVIN. Don't you know from the history of the thing that it was found that employment of the injunctive process or what labor called government by injunction constituted in many cases a serious deprivation of the constitutional rights of the private individuals concerned. Don't you know that that rule was made because they convinced the Congress that it was contrary to fundamental justice to establish rule by injunction—in a sense, judge-made law—and then take and punish a man for contempt without having the right as this statute says—

to a public trial by an impartial jury of the State and district wherein the contempt shall have been committed.

Mr. BROWNELL. I never heard it phrased in those words but I do repeat that this is a very specialized area and in every aspect of the contact between labor relations and the law they have set up special rules in this area and I assume there must have been sufficient reasons.

Senator HENNINGS. It goes back to the Pullman strike and other things that happened around the turn of the century.

Mr. BROWNELL. I think we can call that a separate and distinct and specialized area.

Senator ERVIN. They are not much more widespread than the use of injunctions in other areas. The impact is not much wider than the use of injunctions in so-called civil-rights cases. Notably the school segregation cases.

Mr. BROWNELL. It is a very important area, I have no doubt about that.

Senator ERVIN. In other words, according to the allegations which have been made and not very effective denied, the injunction issued by Judge Taylor in the case of Clinton, Tenn., is susceptible of the construction that it denied the right of any man in that area of the United States to question the validity of the decision or to criticize it in any substantial way.

Mr. BROWNELL. Well, that is a pending case in which we are involved; therefore I am not allowed to discuss it, but I would very definitely disagree with that interpretation.

Senator ERVIN. The man who was sentenced, Mr. Kasper, was sentenced to a year in prison for standing and speaking on the courthouse steps where everybody has a right to speak.

Mr. BROWNELL. I hope you are not getting yourself in a position where you are defending John Kasper.

Senator ERVIN. Maybe Sam Ervin or some other person would like to make a speech on the steps of the courthouse of Clinton, Tenn. The rights of John Kasper, whatever rights he had, ought to be protected.

Mr. BROWNELL. By no stretch of the imagination should you put yourself in the same class as John Kasper.

Senator ERVIN. I am putting myself in the class of people having the same rights as John Kasper and the other 160 million Americans.

Mr. BROWNELL. You couldn't have chosen a worse illustration of it than that.

Senator ERVIN. I am not acquainted with the man.

Mr. BROWNELL. You are lucky.

Senator ERVIN. Outside of that in addition to John Kasper there have been notices to show cause issued in that case for violation of the injunction or rather as a basis for contempt proceeding against other people who say that their sole action was exercising the right of freedom of speech.

Mr. BROWNELL. Their rights will be protected by a very able trial judge. If they are not satisfied with his decision they can go to the United States Court of Appeals for that circuit and if they are not satisfied with that, they can apply to go to the United States Supreme Court. So that under our judicial system I think it is fair to say they will not only have their day in court but they have every reason to expect that their constitutional rights will be fully protected.

Senator ERVIN. According to what I have been able to ascertain about that case from information and not from personal knowledge, the trial judge in that case sentenced Kasper to 1 year in prison for contempt without a jury for the very same speech on which a jury on the trial in the State court acquitted him, and also if the trial judge makes a finding of facts against those parties that are now before him, their appeals won't help them much.

Mr. BROWNELL. The case is under consideration now, let's not try it in the newspapers.

Senator ERVIN. Here's what a great lawyer, a great Chief Justice of the Supreme Court of the United States has to say about some of these contempt proceedings, where the judge passes as they do in the ordinary instance on the question whether a man is guilty of contempt in having violated an order signed by him.

> The delicacy of that is in the judge's deciding whether an attack upon his own judicial action is mere criticism or real obstruction and the possibility that impulse may incline his view to personal vindication are manifest.

Mr. BROWNELL. That's why we have the right of appeal to the upper courts to take care of any danger of that kind occurring.

Senator ERVIN. The judge can try the case on affidavits, can he not, at his election?

Mr. BROWNELL. In his discretion.

Senator ERVIN. If the cause is supported by those affidavits and the case is tried on affidavits the only thing that the Federal court can do is see what is right there and then.

Mr. BROWNELL. No they can send it back for a new hearing.

Senator ERVIN. Ordinarily the new hearing is continued by the same judge who like the billygoat has already voted.

All right, Mr. Attorney General, I will not pause to ask you now unless you want to give it, but can you state any other facts of those 28 statutes other than the antitrust laws which you contend gives the United States the power to enforce a private right without the consent of the person involved?

Mr. BROWNELL. I would have to review the other 27.

Senator ERVIN. I won't ask you now because I realize——

Mr. BROWNELL. I think you can take this assurance, Senator, that the instance that I have given you under the antitrust laws is not an isolated instance but it is typical of many of those statutes that I put in the record yesterday.

Senator ERVIN. This thing to me is very crucial for the country.

Whether I am wrong or whether I am right, it is my honest view that in opposing these amendments set forth in parts 3 and 4 that I am

fighting to protect the fundmental constitutional rights of all American citizens both white and colored, and I consider that a point quite crucial on the question of these other statutes, and I would appreciate it if at some time during the proceeding, the Department of Justice could communicate to the committee in writing—we don't want anybody to have to come back up here—to point out any sections of any of these other statutes which you think makes these present amendments legally similar to that.

Mr. BROWNELL. I will be very happy to do that, Senator.

Senator ERVIN. On page 1, the proposed new fifth section to be added to title 42, United States Code, section 1985, reads as follows:

> Fifth, the district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section, and shall exercise the same without regard to whether the party aggrieved shall have exhausted any administrative or other remedies that may be provided by law

and the identical wording is also inserted in the proposed subsection (d) to title 42, United States Code, section 1971, in the fourth part.

Mr. BROWNELL. That's correct.

Senator ERVIN. I believe we agreed yesterday that whenever the Attorney General exercises his discretion to bring a suit for injunctive relief under these proposed amendments, the suit can be brought without any prior compliance with the statutes of the State prescribing administrative remedies ordinarily pursued to enable the State to pass on this matter in the first instance.

Mr. BROWNELL. If it appears to be the best way of obtaining justice in that case; yes. It wouldn't be the ordinary case but the power would be there to be exercised if that is the only way you can bring about a just result.

Senator ERVIN. And the effect of that is that the State law becomes inoperative in the case of the suit where the Attorney General elects to bring a suit under this provision.

Mr. BROWNELL. I wouldn't think so. I would think on the other hand that the obligation of the State to go forward with and carry out its administrative remedies is still there, and that the opportunity is there to clear the matter up by State action without the necessity of Federal action going forward. In other words the State proceedings would not be displaced in any way. This would be an additional proceeding.

Senator ERVIN. I will put it this way, the necessity of pursuing the State statutes prescribing administrative remedies would no longer exist, would it?

Mr. BROWNELL. I don't think that presents the right picture. You take for example the Tuskegee case that I gave yesterday. There they have not convened the election board for years, so that many of the eligible voters just can't get the board to convene to accept their registrations. There is a case where your State administrative remedies are for all purposes a dead letter and nobody would be interfering with them. They died of their own accord. This would give the only practical avenue that we can see for protecting the constitutional rights of the citizens there.

Senator ERVIN. In that case, the State administrative remedies, if your deduction is correct, would have died of exhaustion themselves, and they would already be exhausted because they didn't exist.

Mr. BROWNELL. They really are tired and exhausted both.

Senator ERVIN. If a suit was brought under this by the Attorney General, he elected to bring a suit under these provisions for injunctive relief, there would never have to be compliance by anybody with the State administrative remedies according to the letter of these proposed amendments would they? There would cease to be an obligation on that to comply with it.

Mr. BROWNELL. In a special class of suit, I don't want to have it implied by that that the obligation on the State officials to really put life in their regulations would not still exist but this would give an additional method by which the constitutional rights of the citizens could be effectively protected.

Senator ERVIN. The Federal court could go ahead and issue the injunction without any evidence of the compliance with the State.

Mr. BROWNELL. As in the Tuskegee case, if that is the only way to bring about a just result.

Senator ERVIN. In our State, in North Carolina, there are many people who are there to exercise the State administrative remedies. While you pointed out supposed derelictions on the part of three registrars there the persons concerned could have been an appeal prosecuted in a summary fashion to the county board of election and thence to the State boards of elections. If you were to bring a suit under this act in a similar case there would have to be no recourse had by the aggrieved parties to any of those parties.

Mr. BROWNELL. I think you have to remember that in one of those cases you are talking about you find the registrar is still trying to enforce that grandfather clause, you must remember that that means that people in that community who would otherwise be entitled to vote are very discouraged by their chances. When this has been going on for years they don't even apply any more to register because they know it will be hopeless.

Senator ERVIN. I am not certain about your statement that it has been going on for years. It was going on in one particular case.

Mr. BROWNELL. The registrar said to the FBI agent in that case that he was just going to do what his predecessor had done.

Senator ERVIN. Mr. Attorney General, you have told us your inference that you have drawn from the FBI reports. I just wonder if you would make those FBI reports available to the committee so the committee can determine whether or not your inference is the only one that can be drawn from those reports or whether it is the proper one?

Mr. BROWNELL. I think if we have the permission of the person to do so, we would under the rules be able to do so, but I can assure you that the report I have given you here is a factual restatement of the information which was given to the FBI.

Senator ERVIN. I know that you wouldn't have stated it otherwise, but it has been demonstrated here that you and I have honestly disagreed very emphatically even about the law that we have read in the same books and drawn different conclusions therefrom. Isn't it possible that I would draw different conclusions from the FBI reports about this Camden County precincts, the New Brunswick County precincts, and the Greene County precincts?

Mr. BROWNELL. After 3 days of experience I would say it is not only possible but probable.

Senator ERVIN. And it is possible that perhaps I might be correct in at least one of these instances in some small parts; is it not?

Mr. BROWNELL. I don't pretend to be infallible myself.

Senator ERVIN. I could recognize the wisdom of a general policy of not making FBI reports public, but frankly I have some feeling that perhaps it might not be too much cricket, as the British would say, for the Government official to look at the FBI reports and testify, publicly about those inferences and then not permit other people to see those same reports, and see whether or not they agree or disagree with those inferences.

Mr. BROWNELL. I am nettled a little bit by the inferences of your statement there. If I can get the permission of these people to make them public I will be happy to do so. I believe I can get it with your help, and they will be made public. I would like the permission from the chairman to put them right in the record of these proceedings, because I don't want any improper inference here.

Senator HENNINGS. Without objection, that may be done.

Mr. BROWNELL. So there may be no inference that I have made statements here that I won't be able to back up.

Senator HENNINGS. Dependent upon the obtaining of the necessary permission.

Senator ERVIN. I don't know of what assistance I can be.

Mr. BROWNELL. If you won't help me I'll be glad to do it on my own.

Senator ERVIN. I'll be glad to help you. Since I am totally ignorant of how I can be of help, in the present state of my ignorance I would welcome suggestions from you how I can be of help.

Mr. BROWNELL. If the person refuses to act I will ask you if you won't write them a letter and ask them to give their permission.

Senator ERVIN. The injunctive process is much broader in its scope than either the criminal process or the process in a suit by the party aggrieved; is it not?

Mr. BROWNELL. Would you repeat the question?

Senator ERVIN. I will submit it this way: The consequences of the injunctive process which would be authorized by these statutes is much broader than the criminal process under existing law or the process authorized by a private suit.

Senator HENNINGS. If the Senator will yield, and I may interject, the Senator may recall that the distinguished Senator from Mississippi, Senator Stennis, yesterday said he would much prefer the penal clause to injunctive relief. He didn't say he would be for the penal clause, but he did say he preferred it.

Mr. BROWNELL. The reason we asked for injunctive relief here, I detailed at some length on the first day of these hearings. One other way of putting it would be, the reason we are asking for it is because it would be effective, and I think the reason for a lot of the opposition to this is the fear that it will be effective where other means have failed.

Senator ERVIN. Maybe you draw the correct inferences for my opposition. But I would be compelled to say, as far as my conscious awareness of my motivation is concerned, it is quite different. To my mind these proposed amendments are a most drastic alteration in the law of our country in that first, they allow, as I construe them, the Attorney General in the exercise of his discretion, to set at nought statutes enacted by States in the exercise of their powers both under the State and Federal Constitutions; second, that they deny a man in a criminal case his constitutional right to be indicted by a grand

jury, and to be tried before a petit jury in a public trial in a courthouse where he can be confronted by his accusers and have a right to cross-examine them. And insofar as civil cases are concerned, it also denies him the right to have a trial before a petit jury in which he has the privilege of confronting and cross-examining the witnesses against him. And that in many cases, if the action is as speedy as you have suggested, it would, in my judgment, result in the denial of the constitutional rights of the defendants to be represented by counsel of their own choosing, because it has been held in many States, both in the Federal courts, the Supreme Court of the United States, and in State courts, and I have had the privilege of writing an opinion in one of them, that where a trial is so speedy that a man's attorney does not have an adequate opportunity to prepare his case, he is denied in constitutional effect his right to be represented by counsel of his own choosing. These are the motives which prompt my opposition to the laws.

Now I also object to the injunctive process on other grounds. I ask you if it isn't broader in scope and I believe you conceded it will be.

Mr. BROWNELL. To be very effective, I think.

Senator ERVIN. In the criminal case nobody can be convicted of a crime except the parties who are on trial; can they? Now nobody can be punished for a crime except the parties who are duly on trial and are found to be guilty beyond a reasonable doubt, by the jury?

Mr. BROWNELL. That's right.

Senator ERVIN. And in the case of the injunctive process persons can be punished as a result of the issuance of an injunction who never were parties to the trial and had no opportunity to contest the validity of the injunction; is that not true?

Mr. BROWNELL. In other words, the injunction can destroy the unconstitutional system which exists based on discrimination.

Senator ERVIN. We won't argue this, but my objection is that these statutes provide a method by which the Federal courts, acting pursuant to a suit brought at the discretion of the Attorney General, can deny people, in effect, the constitutional rights which our forefathers thought to be so important that they embodied them in the constitutional provisions, saying that no man could be convicted of a crime, could be placed on trial except on indictment, that no man could be convicted of a crime or deprived of more than $20 of his money without being tried by a petit jury and providing that he should have the adequate representation of counsel and an opportunity to be confronted and cross-examined and to confront and cross-examine his accusers; that is what the statute does in my judgment.

Mr. BROWNELL. And in my judgment I just must respectfully but wholly disagree with that conclusion.

Senator ERVIN. Well, anyway, I take it that you would think the value of the proposed amendments would be largely annihilated if the constitutional rights which people have in other cases to trial by jury and the like should be required in these proceedings?

Mr. BROWNELL. We believe that the existing criminal procedures, which, of course, protect all the constitutional rights which you have enumerated, should remain on the statute books and that they will continue to be useful methods of protecting the civil rights of our

citizens; but as we have pointed out here in example after example, the present laws are not adequate, they do not protect the constitutional rights of our citizens, and it is necessary to have additional and separate means for doing so.

And, therefore, we request that the Government be given civil authority, in addition to criminal authority, just as has been granted in 28 other fields of the law.

Senator ERVIN. Don't you anticipate as a practical matter that resort to the criminal statutes and the private statutes would be in large measure prevented if these amendments are made?

Mr. BROWNELL. I believe they will be there as a very useful procedure to be used, but I am hopeful that by use of the civil procedures we will be able to make real progress in stamping out this system of organized deprivation of constitutional rights of our citizens, and to the extent that we succeed through the use of these civil procedures, then, of course, it will lessen the number of criminal cases that will have to be brought.

Senator ERVIN. In fact, as I understand from your reasons which you gave as to why you favored the enactment of these amendments was the fact that it would enable you to minimize the number of proceedings under the criminal statutes.

Mr. BROWNELL. That's right.

Senator ERVIN. As a matter of fact I think we have a situation which can be illustrated in this fashion: People used to ride in oxcarts until the horse and buggy came along and they used to employ the horse and buggy until the automobile came along. They used to ride on trains in large numbers until the airplane came along. My point is that those who want shortcuts to what they conceive to be justice will insist on resort to these types of suits to such an extent that there will be little resort to the other ones. While people can ride in an oxcart if they want to or use a horse and buggy, I think they will take the speedier methods of transportation. As I said yesterday, sometimes justice delayed is denied but justice hurried and dispensed in haste is ofttimes justice murdered.

Mr. BROWNELL. I will question though, when the Cadillac breaks down they can still ride a horse to the doctor in an emergency and it is a good thing to have that auxiliary method still handy.

Senator ERVIN. They may do that temporarily but there is no danger if these statutes are passed that the authority of the Attorney General to bring suits under these statutes will break down; is there?

Mr. BROWNELL. There sometimes will be occasions when it is more appropriate to use the other method; yes.

Senator ERVIN. I am going back to the injunctive process now; under the injunctive process as distinguished from the criminal process, a man can be punished without ever being made a party to the proceeding in which the original injunction was issued; can he not?

Mr. BROWNELL. No; he cannot be punished criminally.

Senator ERVIN. I didn't say criminally, I say civilly.

Mr. BROWNELL. In what way?

Senator ERVIN. He can be punished for contempt of court for disobedience of the injunction or temporary injunction or restraining order issued in a case in which he was not a party and in which he had no opportunity to contest the validity of the injunction; is that not so?

Mr. BROWNELL. He must willfully defy a valid order of the Federal court in order to be in that position.

Senator ERVIN. Isn't that one of the reasons for this statute? Aren't you trying to get away from the fact that it has to be willful?

Mr. BROWNELL. We are trying to destroy an unconstitutional system of discrimination based on color and if we go through ordinary and valid procedures of the court and get an order of the court which is upheld on appeal, if necessary right up to the United States Supreme Court, then anybody who defies that order of the Federal court under any system of law and order should be subject to the penalties of the law.

Senator ERVIN. Mr. Attorney General, you are not suggesting that most of these cases will be appealed to the Supreme Court?

Mr. BROWNELL. I have no doubt there will be test cases; yes.

Senator ERVIN. There will be a few.

Mr. BROWNELL. I hope they will become so routine after a while it will be so well known and well abided by it won't be necessary to go up to the Supreme Court.

Senator ERVIN. I think you agreed with me yesterday that a person acts willfully whenever he acts intentionally; doesn't he?

Mr. BROWNELL. I think there are some technical legal distinctions there, but for a layman's purpose they are pretty close to the same, I think.

Senator ERVIN. In other words, I would draw the inference that the reason that this provision is made here to have these suits brought in the name of the United States as equitable proceedings is to avoid the right of trial by jury which prevails in civil cases, and the reason why it is to be brought in the name of the United States is to bring it under these statutes which deny parties the right to trial by jury on a charge of criminal contempt in connection with these cases?

Mr. BROWNELL. I would have to disagree with that inference.

Senator ERVIN. What is wrong with that?

Don't you agree with either one of them?

Mr. BROWNELL. No. As I said yesterday, I cannot see either one of those points.

Senator ERVIN. I think maybe I can put the question this way: that you favor giving the Attorney General the power to bring equitable proceedings to enforce constitutional rights of parties because those constitutional rights in your judgment could be vindicated more speedily if the defendants were not permitted to enjoy the right to trial by jury which would otherwise prevail.

Mr. BROWNELL. You always put a "zinger" on the end of it.

I favored these equitable proceedings as an additional mode, but I do not in any way want to do away with the power of the Government to also try and reach the same objective through the criminal route where that is the more acceptable one.

Senator ERVIN. You don't want to do away with any of the powers of Government, but the effect of these statutes is to do away with not only the powers but the rights of citizens?

Mr. BROWNELL. Oh, no.

Senator ERVIN. Would you agree then if you have no intention——

Mr. BROWNELL. Every right they have now under the criminal statutes they will retain, and every right that they have under our

system of equity law would be maintained if we are given the right to bring equity actions here.

Senator ERVIN. You are talking about equitable law, but let's go back to legal.

Mr. BROWNELL. To what?

Senator ERVIN. Let's go back to legal.

At the present time people have a right if you proceed against them criminally or sue them for damages—a private individual sued for damages or prosecuted criminally would have a right to trial by jury, wouldn't he?

Mr. BROWNELL. They certainly do, and in any case where the Federal Government has equity powers, those public rights may be enforced according to the well-established principles of the equity law.

Senator ERVIN. That is exactly it.

Mr. BROWNELL. And those will still be there to protect the rights of citizens in any way that has been deemed acceptable under the common law and by the Congress and persons who are affected by equity proceedings.

Senator ERVIN. Let me put it this way——

Mr. BROWNELL. The equity proceedings, as I said yesterday, were put there to ameliorate some of the harsh effects on private individuals that grew up under the old law. Far from being a deprivation of his rights, it is an added protection to have the equity law.

Senator ERVIN. Is it not the thought and the purpose of those who have the laudable purpose of enforcing the alleged constitutional rights mentioned that they could do that best in a proceeding in which the defendant would not have the right to have the facts found by a jury rather than the judge sitting as a chancellor.

Mr. BROWNELL. Well, I think I would put it this way, the experience over the years is that in order to do complete justice it is necessary to have both types of proceedings, and in either type, either the equitable one or criminal one, a body of law has been built up to protect citizens against any excesses on the part of the Government.

Senator ERVIN. If one of the objections of the proponents of these proposed amendments was not to abolish the right of trial by jury, would you object to amending this law so as to secure this right?

Mr. BROWNELL. The right is already there on the statute books, it is not being changed one iota by this legislation. It will stay right there and it will be there as long as you leave it there.

Senator ERVIN. The point is that the option of bringing a proceeding does not rest in the power of the defendant, and under these statutes the Attorney General by deciding to bring a proceeding under the amendment, if it is adopted can prevent the defendant from having the other two types of proceedings brought against him, is that not so?

Mr. BROWNELL. If I understand what you are saying Senator, it is this, that some people that are violating the law and the Constitution by discriminating against persons in this area of civil rights on account of their color cannot be effectively proceeded against by the Federal Government at the present time; and they, of course, are satisfied with the status quo.

Here is a well-tried procedure, the equity procedure, the injunction procedure, which has worked well in other cases, has been ap-

proved time after time by Congress, and which could be used and would put a stop, we believe, to these unconstitutional actions.

I see nobody's constitutional rights as being violated because the Government exercises injunctive procedures, equity procedures to reach the goal which we really I am sure all agree upon, that discrimination in the area of civil rights based on color and religion is wrong, is wrong constitutionally and is wrong morally.

Senator ERVIN. Is it conceivable to you that in some instances that the people you proceed against may not be guilty?

Mr. BROWNELL. That will certainly be discovered in the course of the proceeding because no administrative officer will have the right to declare them guilty.

It can only be done according to the time-honored procedures and system of our Federal courts which is a good system as we agreed yesterday.

Senator ERVIN. And is a system in which a party has no right to trial by jury?

Mr. BROWNELL. Not in equity proceedings necessarily.

Senator ERVIN. And is tried by the judge?

Mr. BROWNELL. In equity proceedings he does not as a matter of right in all cases have trial by jury. That is based on long experience over the years.

Senator ERVIN. I know that, Mr. Attorney General, I realize that.

Mr. BROWNELL. In the criminal cases he does have the same matter of right. That also is based on long years of experience but both are constitutional.

Both have been found effective in their proper sphere and all the protections that have grown up either for the criminal trial or the equity procedures would be preserved under this program that we are presenting to you.

Senator ERVIN. Certainly. But instead of electing to proceed against him under a system under which he would get a right to a trial by jury and a right to be condemned only on evidence of witnesses whom he could cross-examine you would substitute that action by action where he could be condemned by the judge on affidavits of witnesses who are not subject to cross-examination?

Mr. BROWNELL. I can't tell you how many times you have tried to get me to say that this was a substitute for the criminal process. I think I have made myself entirely clear on that.

Senator HENNINGS. Will the Senator suspend for a moment?

I feel it is my duty as the chairman of this subcommittee not to limit the examination but I do think that the repetitious, argumentative form of debate that has taken place has been going on since 10 o'clock this morning and the great part of yesterday morning and I know that my distinguished colleague is an able lawyer and an able cross-examiner and is doing what he thinks is his duty but I do think that we are limited as to time.

There are other things in the United States Senate which Senators must engage in, there are other committees, other work. It seems to me, I have not studied the record but it seems to me, Senator, that much of this has just been gone over and over again. I realize that we are not bound by court procedures but I think we would all appreciate it if the distinguished Senator from North Carolina would undertake to, once having made his point, which he has done abund-

antly and certainly forcibly and with great astuteness and he being the learned counsel that he is I just think that can't we try to just get down to the ultimate facts and possibly get on with the next witness?

We have quite a number of witnesses here waiting to testify.

Senator ERVIN. Mr. Chairman, for 3 mornings——

Senator HENNINGS. It is only a suggestion, sir.

Senator ERVIN. I am just going to say this: For 3 days I have been undertaking or trying to the best of my ability to get an answer from the Attorney General to what is a very simple proposition, and if he will answer this, I can soon speed up my part of the thing.

Senator HENNINGS. I am trying to be as impartial as the Senator from North Carolina knows I can be, and it is my duty to be so. But it just seems to me that we keep going around and around the barn, and if we have not approached we are now close to approaching the nature of just an argument.

The rules are very liberal and I shall not cut the Senator off, I assure him of that. He may proceed as long as he pleases and in any way he pleases.

Senator ERVIN. For 3 days I have been trying to get the Attorney General to give me a simple answer to a very simple question, and that question is this: If the procedure which would be authorized by these proposed amendments, while leaving the prior law in effect, would not afford the Attorney General in the form of a new type of action in the Federal court an opportunity to avoid existing procedures under which parties would be entitled, in the case of criminal cases, to be indicted by grand juries, and in both civil and criminal cases to have the facts determined by a petit jury, and proceedings in which they would have the right to confront and cross-examine the witnesses against them.

The Attorney General, so far as I can tell, has never yet answered that question. He has given me a multitude of answers to repetitions of that question, all of which are arguments which tend to obscure what I say would be the proper answer to that question.

Now I will put it to him one more time.

Mr. BROWNELL. No.

Senator ERVIN. Mr. Attorney General, I started to talk to you about this. Let me ask you: If you elected to proceed under these statutes, the man would have no right to trial by jury, would he?

Mr. BROWNELL. I have answered the question, Mr. Chairman, and it only took two letters to do it, n-o.

Senator ERVIN. Wouldn't you answer that "no" also?

Mr. BROWNELL. I have answered the question, Mr. Chairman.

Senator ERVIN. Anyway, Mr. Attorney General, a person under contempt process who is not a party to the action, can be punished for contempt if he willfully disobeys an injunction, or if he intentionally disobeys an injunction in an action to which he was not a party and in which he had no opportunity to contest the validity of the injunction.

Mr. BROWNELL. In keeping with the spirit which the chairman is trying to engender into these proceedings I may respectfully say I have also answered that question.

Senator ERVIN. Sir?

Mr. BROWNELL. I have also answered that question.

Senator ERVIN. Would you mind answering it one more time for me, because I have some difficulty in interpreting your answers and I interpreted them yesterday and you said my interpretation was wrong.

Mr. BROWNELL. Do you want an outline of the procedure in the Federal courts on contempt?

Senator ERVIN. I just wanted an answer to a question, this simple question: Whether or not under the injunctive process if a party cannot be punished for contempt of court, even though he was not a party to the proceedings in which the injunction was issued, and had no right to contest the validity of the injunction on the merits.

Mr. BROWNELL. The answer which I gave before still stands. If he willfully and knowingly defies the order of the Federal court, he can be punished for contempt.

Senator HENNINGS. I think, Mr. Attorney General, that might be said to be hornbook law.

Mr. BROWNELL. That is correct.

Senator HENNINGS. Law school.

Senator ERVIN. Also it is quite conceivable, rather the injunctive process permits the punishment for contempt of newspaper editors who criticize the decision of the court in issuing the injunction, is that not true?

Mr. BROWNELL. If they willfully defy a valid order of the Federal courts, they can be punished for contempt.

Senator ERVIN. Mr. Attorney General, there has been a great deal of discussion in the country about the Till case.

There is not any provision in the bill known as Senate bill 83 which would reach cases such as the Till case, is there?

Mr. BROWNELL. I believe that is correct. Certainly nothing that I am advocating here would reach that. We declined prosecution in that case, and there is nothing in the administration measures before you at the present time which would deal with the situation of that type.

Senator ERVIN. Mr. Chairman, as the chairman said a moment ago, Members of the Senate have many problems, and I came here on the 1st of January and I was on the committee considering the Middle East question, and I stayed on that committee about 6, 7, or 8 hours a day most of the month, and what studying I have done on this subject I have had to refresh my mind on at nights.

Therefore I asked Mr. Young to assist me, and I would ask that Mr. Young be permitted to examine the Attorney General with respect to the first and second provisions, parts of this proposed bill, and I will join the chairman in the hope that perhaps Mr. Young won't be quite as profuse as it has been insinuated I have been.

Senator HENNINGS. I did not mean to insinuate anything of the sort, may I say to my learned friend from North Carolina. I just thought we were getting into redundancy at the point where questions had been asked and answered repeatedly over a long period of time. I could well be in error.

I also did tell my good friend from North Carolina that I was not in anywise seeking to limit him nor restrict nor to place any injunction upon him.

Senator HRUSKA. Mr. Chairman, would the Senator yield before Mr. Young assumes his role?

Senator ERVIN. Yes.

Senator HENNINGS. I do not think we have decided about Mr. Young as yet.

Senator ERVIN. Mr. Chairman, I did not mean to say the chairman had been unkind to me in any respect. The chairman has been very patient and tolerant. I am just trying to defend what I conceive to be the rights of the American people, and I think we ought to take as much time as necessary even with persons as obstruse as I am to see that the American people have an opportunity of being informed of what they are going to get if these measures are passed.

It is in good faith.

Senator HENNINGS. I am very glad the Senator said "obstruse." I am sure he did not mean "obtuse."

Senator ERVIN. I meant obtuse.

Senator HRUSKA. Mr. Chairman, I should like to observe first of all with reference to the questioning of the Senator from North Carolina, I have enjoyed it tremendously and I think I have learned a lot, I think all of us have.

Originally there was some discussion on having relatively brief hearings on this legislation, and perhaps no hearings. I opposed that position. I felt that regardless of the fact that the subject had been thoroughly canvassed for many, many times, that after all there are certain procedures here which are inherent in our legislative system.

We ought to follow them. The body in the Senate is constantly changing as to personnel, and even if it were not, these procedures should be abided by.

At the time there was discussion of this in the committee, however, I also suggested that there should be a line between a reasonable chance to be heard and to bring out evidence and facts and that procedure which sometimes is referred to very, very bluntly as "filibuster."

I don't know where that line belongs, Mr. Chairman, and I presume that you have some difficulty in your own mind, and I for one want to extend every bit of courtesy and fair intent to every member of this committee in that respect, but I do believe that there will ultimately come a time when those limits perhaps may be exceeded, and I just want to say that for one, as one member of this committee, when that time comes in my judgment, I should like to express myself and perhaps get the sense of the committee, if it will not be asked for by others.

Senator ERVIN. If I could make an observation on that, I have this on the authority of one of the Senators who is very violently opposed to filibuster. He says when he talks for a long time or takes the floor of the Senate or a committee for a long time it is an educational process, and the inference I draw from that, when some Senators disagree, that is a filibuster.

Senator HRUSKA. Let me say I accept that very wise observation with all the humility that anyone should under the circumstances. I understand yesterday that there was some reference made to the attendance or nonattendance of certain of the members of this committee and some curiosity expressed with reference thereto. I might say for the record that the ranking member of the minority of this subcommittee is very critically and seriously ill.

Senator HENNINGS. That was stated yesterday.

Senator HRUSKA. I was not aware of that.

The next ranking member of the minority is away from Washington on official business, will not return until Monday. My absence yesterday from the hearings of this committee—and I have been here when I could be—was occasioned by consideration of a very important piece of legislation. We are required from time to time to do other things besides sit on a special subcommittee or in special subcommittee hearings.

Senator HENNINGS. And how many subcommittee and committees does the Senator serve on? I am on 16.

Senator HRUSKA. At any rate, the piece of legislation on which we were engaged yesterday involves some $2 billion, many projects which involve the protection of life and property, and I felt that that was as important perhaps as being a third member on this committee, and I would like to make that statement for the record.

Now, Mr. Chairman, with your permission I would like to interrogate the witness here along a line which has not so far been explored as far as I know.

Senator HENNINGS. The Senator requires no permission at all. He may interrogate as fully as the distinguished Senator from North Carolina has.

The chairman is not a dictator. I just do the best I can. How many witnesses have we, Mr. Slayman, if the Senator will bear with me?

How many witnesses remain to be heard?

Mr. SLAYMAN. We are still examining the first witness.

Mr. BROWNELL. I can verify that.

Mr. SLAYMAN. We have about 20 or 30 more on the schedule.

Senator HENNINGS. So while it is not the province of the chairman—and if it were I would not in anywise undertake to limit the examination by any Senator of any witness on any subject, I want to make it abundantly clear that I think we all have other things to do that are rather demanding.

I am chairman of one full committee and chairman of three subcommittees and a member of all these others and we do have a few other odds and ends to look after.

However, I do not mean to limit nor to put within any compass of time nor convenience these hearings.

Now, proceed.

Senator HRUSKA. I still would like to say for the record that the questions which I am about to put will not be cumulative in effect nor repetitious.

Mr. Attorney General, I should like to make some inquiries concerning section 104 of S. 83 upon which you commented in your principal statement a couple of days ago.

It has to do with the limitation or the apparent limitation put on the scope of the activities of the Commission, in that you objected to the word "sex" being included in that sentence there, the first sentence of subparagraph (1), and you suggested, and I am quoting from your statement:

> This provision is not germane to the purpose of the legislation and should be stricken.

During your testimony, you indicated that in your judgment that same lack of germaneness would extend to the amendment which had

been introduced by Senator Goldwater, to wit: that membership or nonmembership in a labor or trade organization would be outside of the purposes of this legislation.

Would you for the benefit of the committee and of the Senate tell us what your ideas are, either by way of definition or by way of description what the purposes of this legislation are which would act to limit them to, in this particular instance, to color, race, religion, or national origin?

Mr. BROWNELL. I have no doubt that there may be serious problems in these two specialized fields, discrimination based on sex and discrimination based on membership or nonmembership in labor organizations.

I do not feel qualified to speak about the extent of the problems that may be involved in those two specialized areas, because it is not primarily within the jurisdiction of the Department of Justice, so that I do not want to be understood as opposing congressional action in those areas if the need exists for it.

I do feel that those problems are so specialized and separate from the main problems which this Commission would be set up to deal with, that it would be unwise to give such a broad sweep of jurisdiction to one particular commission.

If there is need for a commission in those areas, I would respectfully suggest that it be a separate commission.

Senator HRUSKA. Mr. Attorney General, in the second subparagraph of section 104 there is no indication of any limitation whatsoever in that argument which you suggest now.

I cannot quite see its validity because the second subsection reads that the Commission shall study and collect information concerning economic, social and legal developments constituting a denial of equal protection of the laws under the Constitution.

Now that does not say denying equal protection of the laws on account of color, race, religion. The bars are down and the scope is unlimited. I cannot quite understand therefore any thinking or suggestion that there should be only one facet of human behavior or of legal procedures here which would be within the purpose of the legislation which we are discussing.

Those things don't quite jibe.

Mr. BROWNELL. Well, this is a 2-year commission, you know.

Senator HRUSKA. And they cannot study all the problems that are facing the Congress. Therefore, I would suggest that the legislative history here shows that in these two particular areas you mentioned, that it was not the intention of Congress to go into them under the auspices of this Commission.

Can you tell us, describe or define what the purposes of this legislation are?

Mr. BROWNELL. Yes. You will notice the first paragraph here sets forth the primary matters to be studied by the Commission. That appears over here. I guess I can find it in a minute.

I am reading now from S. 83, page 11:

> The Commission shall investigate allegations in writing that certain citizens of the United States are being deprived of their right to vote, or that certain persons in the United States are voting illegally or are being subjected to unwarranted economic pressures by reason of their—

I would suggest striking out that word "sex"—

color, race, religion, or national origin.

Senator HENNINGS. May I make this inquiry, since this is your bill, Mr. Attorney General, if my learned friend from Nebraska will yield for a moment.

Senator HRUSKA. Surely.

Senator HENNINGS. What is meant by "unwarranted economic pressures"?

Mr. BROWNELL. I would interpret that as being "illegal."

Senator HENNINGS. It does not say illegal. It says "unwarranted."

Mr. BROWNELL. I would have no objection—

Senator HENNINGS. It is rather loose language.

Mr. BROWNELL. If you think the other is more precise, I would have no objection to making that change.

Senator HENNINGS. Wouldn't you say that that is rather loosely drafted?

Mr. BROWNELL. I have this general philosophy about the drafting of terminology—

Senator HENNINGS. Are uneconomic pressures warranted?

Mr. BROWNELL. You know one of the time-honored methods of hamstringing a Commission is to tack specific language of the authorizing resolution to spend the first year testifying in the courts whether or not they are going outside of their particular jurisdiction.

Therefore, in the drafting of this measure we have perhaps advisedly made the scope one which would make it unnecessary and in fact impossible to waste the time of the Commission on fruitless controversy as to the extent of their authority.

I believe that the overall language is such that while it will give them the scope to carry out their mission, it will not unduly restrict their earnest endeavors to find out the extent of his discrimination.

Do I make myself clear on that?

We are trying in other words not to get the Commission tangled up in any legal proceedings as to the precise scope of their authority, but I think the general intention is quite clear.

Senator HRUSKA. Would you say then that the purpose of this legislation is embodied in that first, would be more or less described and more or less defined and limited by the text of that first subdivision in section 101?

Mr. BROWNELL. No. 2 and No. 3 are primarily auxiliary to No. 1, yes, but during the course of the studies of this Commission, they will undoubtedly run across other instances where there is a denial of equal protection of the laws, and we want them to be able to examine into them.

But the primary obligation of this Commission would be to carry out, in the words of the President, the duty of seeing whether it is true, as has been alleged on such a widespread scale, that there has been unwarranted economic pressure against certain of our citizens by reason of their color, race, religion, or national origin, and that this is being used to deprive them on a wholesale basis of their right to vote.

Senator HENNINGS. Has the President ever read any of this legislation, Mr. Attorney General?

Mr. BROWNELL. Yes.

Senator HENNINGS. He is familiar with it?

Mr. BROWNELL. Yes.

Senator HENNINGS. Did he have anything to do with drafting any of it?

Mr. BROWNELL. He personally did not but I went over it with him, yes. We drafted this legislation in the Department of Justice. You will find some of the same language I believe was taken from his public messages.

He is, as you know, greatly disturbed by these allegations.

Senator HENNINGS. Could you give us a little bit of your philosophy about this commission?

The first commission I can remember was the Wickersham Commission, which went back to about the time I was a boy at law school.

What is this commission going to do? Don't you think this problem has been studied enough? Don't you think everybody knows in one way or another about it and is sufficiently convinced of his own position on it so that we do not need to set up a commission to study this, study that, study the other thing?

I happen to be the vice chairman of the Missouri Basin Survey Committee and we spent a year going out up and down the main stem of the river from Canada down to the confluence of the Mississippi and went over and handed the President a volume that weighed about 4 pounds that we had drafted after considerable effort and struggle with a staff and holding open hearings all of them up and down the main stem of the river, and that is the last I ever heard of that.

This commission of course is your own suggestion, Mr. Attorney General, and I do not mean to make light of it, but I would like to know something about why you think we need such a commission if we are undertaking to have passed specific legislation.

Mr. BROWNELL. I think the answer to that, Senator, is that in certain areas we know enough about it so that we can act, and therefore we have proposed——

Senator HENNINGS. In what areas for example do we not know enough?

Mr. BROWNELL. I think we do not know enough about the pattern of——

Senator HENNINGS. You have read everything from the Gunnar Myrdal survey, "An American Dilemma," in two volumes. Myrdal is the well-known Swedish sociologist.

You have read the Gunnar Myrdal survey, I am sure.

Now here we have the report of the President's Committee on Civil Rights. It is dated Washington 1947, and of course as you repeat with much better phraseology than I can devise or use or come by, by any means "The American heritage comes from freedom and equality."

All these things are fine, but don't we all know—you are familiar with this volume, are you not, Mr. Attorney General?

Mr. BROWNELL. Yes, I am.

Senator HENNINGS. I would like to inquire as to just what such a commission would do.

We have seen these commissions come and go to the point where learned men sit around tables every now and then when they can get themselves together and hire somebody to make a report and they make a report and that is put away in the archives.

Don't you think what we need is legislation?

Don't we need action rather than another study?

What are we going to study, Mr. Attorney General, if I may inquire?

Mr. BROWNELL. I think the difference between a study like the Myrdal study and what we have in mind here is that that is really a collection of opinions. What we would really like to have for the benefit of our work would be a factual study where testimony could be taken under oath from people as to any patterns or practices which exist in any area of discrimination based on color, religion——

Senator HENNINGS. But if we have all the legislation we should have, do we need to have any more testimony taken under oath?

Mr. BROWNELL. I think we would probably find, it would be my hope and in fact my belief, that a bipartisan commission of this kind with authority to subpena witnesses and study the facts would be able to bring back sworn specific testimony which would not only be of benefit to us in the area of law enforcement, but would be of vital benefit to the Congress in determining the need for additional legislation.

Senator HRUSKA. That is legislation in addition to that which is proposed in the bill which you refer to, S. 83?

Mr. BROWNELL. Yes.

As I have testified previously, I think that this program is not the whole answer. It meets the most pressing needs in the areas where we believe we know the right answers in the way of legislation.

But this is a most complex and widespread problem, perhaps the most complex of any problem that we have in the country, and I think it might well lead to additional legislation if we have the facts on which to base a reasoned judgment.

Senator HENNINGS. For example, what sort of legislation could it possibly result in?

Mr. BROWNELL. It certainly would study the need for strengthening the criminal provisions of the law against discrimination.

Senator HENNINGS. I understood you to say, Mr. Attorney General, you did not believe in invoking any of the criminal penalties.

Mr. BROWNELL. No, I would expect to continue to use the criminal penalties.

Senator HENNINGS. You would proceed by injunctive relief?

Mr. BROWNELL. Yes, but not exclusively. I think we would continue to use the criminal penalties, but I do beleive that we would uncover in this way practices of which we have very little knowledge at the present time, bars to voting, bars to exercise of equal protection of the laws.

There has been no factual study made by sworn testimony with Government authority in this area for many years.

Senator HENNINGS. Myrdal, I thought, did a rather complete job on this, as did many others. You have read Lanterns on the Levee of course by the son of a former Senator from Mississippi. You have read the work or editorials by Hodding Carter. I can mention a number of men in the South. You are certainly cognizant of some of this.

Now the men on this commission; we are setting up a new commission. And I have read a good deal, I must say, about these com-

missions and committees. None other than Charles E. Wilson was Chairman of the President's Committee in 1947.

The other members of the committee were: Mrs. Sadie T. Alexander, Mr. James B. Carey—I am reading from page No. 8 of this report—Mr. John S. Dickey, Mr. Morris L. Ernest, Rabbi Roland B. Gittelsohn, Dr. Frank P. Graham, former president of the University of North Carolina, the Most Reverend Francis J. Haas, Mr. Charles Luckman, Francis P. Matthews, Mr. Franklin D. Roosevelt, Jr., the Right Reverend Henry Knox Sherrill, Mr. Boris Shishkin, Mrs. M. E. Tilly, and Channing H. Tobias.

You see, Mr. Attorney General, a great many things—and I am not being patronizing when I say that it is not always easy to get legislation not only through committee but on the floor of the Senate.

Now you come in with a bill for another commission and you come in with other cognate legislation. I think we have got to make some case for the Commission, which is the Attorney General's and part of the administration's program and plan.

I think we have been very specific about that. I think all of us would like to know more about the human race and would like to know more about some of the impacts of one group or another of our society.

I am only asking to be informed.

Mr. BROWNELL. This occurs to me——

Senator HENNINGS. Excuse me, I recognize the senior Senator from Nebraska.

Senator HRUSKA. I just want to observe, Mr. Chairman, with your thoughts I fully concur, with your observations if this bill stops with a commission, but I do not think it does.

It has some specific provisions and does make some progress toward that goal which both you and I hope someday will become effective in a very fine way.

But if the legislation was confined to the creation of a commission, I certainly would fully agree with you. I would be, however, interested in the more specific ways in which the Commission would operate and some of its benefits.

Mr. BROWNELL. Just in the area we have been talking about here in the last few days in which our limited law-enforcement program, limited as it is to criminal procedures, has uncovered such practices as that one registar in one place is still using the grandfather clause as a method of registering voters.

In another area, in another precinct, we find that, while the theoretical machinery of the State is adequate to protect the voting rights of its citizens, the procedures have not been followed out. The election board has not met for years to allow any new voters to register.

In another area we find a setup which on paper is all right, but we find that the election-board members walk out of the room when a Negro citizen tries to register, so that there won't be a quorum.

We have hints and scraps of evidence of this kind which lead us to believe that, the way the laws are administered, the rights of the citizens are being violated.

The only way you can find out, as we see it, whether this is a widespread practice or not, what devices are being used to circumvent the Constitution, is to have a factual study made with the authority of the

Government behind it and the power of subpena so that you can get sworn testimony from officials and citizens.

In that way you bring the real, hard, legal evidence before the proper committees of the Congress to see whether or not ways and means cannot be devised to further protect the constitutional rights of our citizens. That is the type of thing we envision from this Commission.

Senator HENNINGS. Mr. Attorney General, if the Senator will yield—have you completed that portion of your examination?

Senator HRUSKA. No; I have not.

Senator HENNINGS. Please proceed, then.

Senator HRUSKA. Mr. Attorney General, I am still trying to get at what the purposes of this legislation are. So far you have indicated the purposes embrace pretty much the first subparagraph of section 104. Is that exclusively the purpose of this legislation?

Mr. BROWNELL. No; we have two other sections there. No. 2 is to study and collect information concerning economic, social, and legal developments constituting a denial of equal protection of the laws under the Constitution.

And then, No. 3, to appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution. In other words, make recommendations for legislation.

Senator HRUSKA. Why were the four concepts there of color, race, religion, and national origin enumerated to the exclusion of others? Would this Commission, when it started its studies and its investigation, if instances were brought to its attention that women were not permitted to register, would they interest themselves in that?

Mr. BROWNELL. As I said in my prepared testimony, I think that is enough of a separate issue to be sort of an——

Senator HRUSKA. Do you want another commission for that purpose, Mr. Attorney General?

Mr. BROWNELL. That would be up to Congress, as I say.

Senator HENNINGS. Mr. Attorney General, how much do you envision, if the Senator will yield, how much do you envision on that same subject?

Mr. BROWNELL. We have not had any complaints of that.

Senator HENNINGS. How much do you envision the entire operations in the work of the Commission might ultimately come to?

Mr. BROWNELL. I think it would come undoubtedly——

Senator HENNINGS. How much is it going to cost for 2 years to do this work?

Mr. BROWNELL. I think what we would do there would be to talk it over with the Appropriations Committee.

We would make a recommendation to them and they could analyze it. We have not sat down to figure out how much of a staff would be needed or how much traveling expenses would be, but I think they have a body of experience over there with other commissions, the Appropriations Committee, and it would not be too hard to make an estimate. If it turned out to be too little, we could come back and ask for a supplemental appropriation.

Senator HENNINGS. Mr. Attorney General, it is true, isn't it, as a matter of fact, that all of this legislation has been called the administration program and has been recommended in this volume "to secure these rights"?

Mr. BROWNELL. Yes.

Senator HENNINGS. I don't mean to take anything away from you.

Mr. BROWNELL. These I guess have been kicking around for a good long time. Many very well-meaning people have urged them. All we could say, I guess, is that we put them down in a specific form in such a way that we believe it is a practical next step in the solution of these problems.

We believe it is such a moderate program that the Congress will accept it. We believe it is effective enough to make it worth doing, and we believe that it provides the machinery in this Commission portion to get the facts upon which Congress would be warranted in taking the next steps.

Senator HENNINGS. May I ask you, Mr. Attorney General, do you think that a commission, in the light of a man of your experience of these problems, could tell you anything you don't know about it?

Mr. BROWNELL. Oh, very definitely.

Senator HENNINGS. I don't mean statistics, I don't mean figures, I don't mean the work of the short-pencil boys.

Mr. BROWNELL. I am getting into an area which is peculiarly yours. I have a little legislative experience myself on the State level, but as I have observed the workings of our system, it is much easier and public opinion responds much more quickly and willingly to legislation which is based on an authoritative study made by a governmental commission, by a bipartisan commission which has sufficient power to get the facts, and done with the approval of the representatives of the people; that is the Congress.

There is much better public acceptance. You can act with much more assurance in the matter if you have that kind of basic factual study made as a basis for further legislative steps. For that reason alone I think that this would be a very important forward step to take in solving the problems of discrimination and unconstitutional actions in deprivation of a citizen's constitutional rights.

Senator HRUSKA. Mr. Attorney General, I am still not satisfied with reference to that first part. However, I will pass it up for the time being to suggest that this bill is entitled, that is, it is described as one to provide for the further securing and protecting of the civil rights of persons within the jurisdiction of the United States, and part I is devoted to the creation of a Commission on Civil Rights.

We find throughout the bill reference and provision containing the words "civil rights." Is there any definition of civil rights that you would give us the benefit of, so that we would know what that embraces?

Mr. BROWNELL. Yes; that will appear in the record.

At the request of the distinguished Senator from North Carolina, we agreed to put in the record a list which will probably run into several hundred cases of where the courts have defined that term. It is a shorthand way of describing all these situations where the courts have actually passed on it, and that will be in the record of these proceedings.

Senator HRUSKA. That will be in the record?

Mr. BROWNELL. Yes.

Senator HRUSKA. For example, in S. 83, on page 15 in part 3 there we have an amendment consisting of subsection 4, wherein there is the right given to recover damages or to secure equitable or other

relief under any act of Congress providing for the protection of civil rights, including the right to vote.

I presume there are other rights embraced in that, besides the right to vote, and it is for that reason that it seems to me we ought to have some further description or definition of that term.

Senator HENNINGS. May the chair observe that the Senator from Nebraska is cosponsor of this bill and I assume that he must have——

Senator HRUSKA. Yes; I am a cosponsor of it, Mr. Chairman.

Senator HENNINGS. I don't say that critically.

Senator HRUSKA. And I am very much interested in its passage. I would like to see it passed in a workable form, something that can be administered not only by the public officials in charge of the administrative end but by the judicial officers of this Nation, State, and National as well, and it is for that reason that I would like to establish a legislative history here in this committee and on the floor later on, which would bear on that point which I raise.

I am interested in this legislation, Mr. Chairman, and I am very heartened when we hear testimony like this, for example:

> Despite significant and oftentime heart-warming gains there is no question but that denials of equal opportunity are still many and grievous. We find them in employment, in education, in transportation, in housing, in health facilities, in public recreation, in the right to vote and even in our court.

Then skipping some of the language in that testimony:

> This form of man's inhumanity to man wherever it occurs in our Nation violates one of the fundamental principles of our democracy, namely, that men are to be judged on their individual merits, not according to the incident of their membership in any one race or another or by their choice of religious affiliation.

Then it goes on to say:

> It offends the American sense of fair play.

Now the record is replete with testimony of that kind, and then somehow or other there creeps into the picture a desire to limit this civil-rights legislation to a particular kind of civil-rights, and we go only to color, race, religion, or national origin. That I would deplore very much. Either there are civil rights or there are not. There should not be first-class and second-class holders of civil rights. That is why I have some interest in seeing consideration, and earnest consideration given, to Senator Goldwater's amendment, because there certainly is very valid argument and reason for suggesting that maybe civil rights embrace the right to work, separate and apart from the right-to-work legislation.

That is something separate and apart from it, and so-called right-to-work laws which have acquired, by reason of that title, a certain connotation which perhaps is objectionable to many of our people.

But the right to work as an abstract right, as an abstract term, is certainly entitled to serious consideration as being a civil right.

For that reason I am somewhat disappointed frankly, Mr. Attorney General, in the conclusion that you drew that that would be outside of the scope of this legislation, and if you have any reasons that you would care to recite by way of elaborations on that conclusion, I would like very much for the committee to get the benefit thereof.

Mr. BROWNELL. I am probably influenced a great deal by the action of Congress over the years in this matter. We discussed it for a while this morning, but even in the area of injunctions we were

discussing this morning, the Congress has thought that the field of labor was so specialized that they adopted special rules governing it. They had the Taft-Hartley law, the Wagner Act, all of those areas in this particular field of labor relations which the Congress has thought to be so specialized and so unique that the general rules would not apply.

Now I must, in order to carry out my responsibility for getting this legislation through, take into consideration that reaction of Congress over the years. I believe that still to be the feeling of the Congress, and since there are separate and distinct problems involved in that area which are not involved in the area that we have been discussing here in connection with these bills, I am so anxious to get this legislation through promptly at this session that I think that it should be split into two separate pieces of legislation.

Senator HENNINGS. Mr. Attorney General, if I may inquire, I seem to recall during the hearing when I was chairman of the Committee on Privileges and Elections—I am sure I have the letter in my files—that you took the position that the so-called—I think it is a misnomer—the so-called right to work is like the death sentence, the "soak the rich" tax bill, and all the other things our bright friends dream up on Madison Avenue in adopting a term for general understanding.

I seem to recall that you took the position that so-called right-to-work legislation should be incorporated in matters regulating the expenditures, reporting of expenditures, and the amendments to the so-called Corrupt Practices Act of 1936.

If that is applicable there, why not in this field?

Mr. BROWNELL. I don't recall that the right-to-work bill entered into that controversy at all, Senator.

Senator HENNINGS. One of your assistants appeared and made certain statements, and you later wrote a letter to me which I have in the files repudiating his statement and saying that we had misconstrued what he said.

I remember it very well.

Mr. BROWNELL. He is here; he can speak for himself.

Senator HRUSKA. In this particular instance I do not think the right to work is involved at all. It is not primarily involved. I can readily imagine a situation and so can you, Mr. Attorney General. Suppose a large industry would move down into some of these areas which you describe as having unconstitutional limitations on their right to vote being imposed by reason of color.

Suppose there is transplanted into that same area large numbers of union men, members of labor organizations who are denied the vote, and the proof thereof will be along the same lines and in the same manner that you have adduced in this case with reference to instances of color.

Certainly that should fall within the purview of this Commission and within the purview of civil-rights legislation, wouldn't you think so?

Mr. BROWNELL. We have hundreds of complaints based on deprivation of the right to vote based on color.

We have not had any complaints at all in the 4 years that I have been there that anybody was denied the right to vote because he was or was not a member of a labor union.

Senator HRUSHKA. And yet if it did arise and did occur, if there is anything of that kind, would not this Commission be interested in it?

Would you as the administrator of the Department of Justice be very interested in it?

Mr. BROWNELL. I believe we could take care of that under existing law. I have never heard of a case arising. We have to take first things first. The problem here seems to be the one as to which we get complaints practically every day, that there is discrimination on account of color in this area. I have never heard the other raised.

As I say, if Congress after a study decides that that is an important issue that should be studied, I believe it should be separately studied, and I believed it should be studied by people who are experts in the field of labor and labor relations.

Senator HRUSKA. How many complaints does your Department have with reference to the deprivation of vote on the grounds of religion?

Mr. BROWNELL. We have had some.

Senator HRUSKA. How many?

Mr. BROWNELL. I could not give you the exact number but it is substantial enough to make us feel that there is a serious problem there.

Senator HRUSKA. And is the same true with reference to national origin?

Mr. BROWNELL. Yes. There are certain areas, for example, where the so-called Spanish-Americans it is alleged are deprived of the right to vote, merely based on the fact that they came from Mexico.

Senator HRUSKA. I presume there will be further questions on this at a later time, Mr. Chairman. I see we are not beyond the ordinary usual time of adjournment.

I will yield.

Senator HENNINGS. Thank you, Senator.

Are there any questions, Senator Ervin?

Senator ERVIN. Mr. Chairman, I wanted Mr. Young——

Senator HENNINGS. I think we should try to accommodate the Attorney General.

Senator ERVIN. In other words, Mr. Chairman——

Senator HENNINGS. We should accommodate him as much as we can. He has been very indulgent and very patient in coming here.

Senator ERVIN. He certainly has.

Senator HENNINGS. I do not want to foreclose any word or syllable of inquiry.

Senator ERVIN. I would like to say I was terribly pressed for time by reason of my membership on this other committee, also on the Government Operations Committee. Like a poor lawyer who has three cases going on at the same time, and that is the reason I asked Mr. Young to assist me in this.

I have not studied the Commission and he has. I asked him to assist me and I would like to ask that he be allowed to ask questions of the Attorney General concerning the Commission and the provision concerning the appointment of an Assistant Attorney General.

Senator HENNINGS. Senator, I want to say this:

We are very glad to have Mr. Young here and we are glad to have any men or women indeed who have studied this question.

Mr. Young is a member of the staff of the full Committee on the Judiciary, and while I don't want to foreclose you or Mr. Young through you, at the same time I think it is a rather unusual procedure for a member of the staff of the Judiciary Committee of which this committee is one of its subcommittees, to cross-examine the Attorney General, if that is what is in mind.

Now if Mr. Young has some questions that he has looked into and has as special or peculiar knowledge with respect to it, I see no objection to that, but I do not think it would be in keeping with our general custom and practices to have Mr. Young cross-examine the Attorney General of the United States or any witnesses here.

As you all know, committees are conducted under the most liberal sort of procedures and rules, are not bound by the rules of evidence, are not bound by really any except very basic procedural and fundamental points.

However, I will certainly not raise the objection. I would like to suggest the Attorney General has been here some time. However, I see no objection to Mr. Young going into some matters. It is about time for the noon recess and I am sure the Attorney General has plans for this afternoon and we would like to accommodate him.

Senator ERVIN. As I say, I have asked Mr. Young to study on these particular phases of the bill because I realized that I would not have an opportunity to do so, and I would like for him, not as a member of the committee staff, but acting in my behalf, to question the Attorney General.

Senator HENNINGS. I wonder if Mr. Young would mind or if the learned Senator from North Carolina would mind if the questions be submitted in writing?

Senator ERVIN. Yes, sir, I would, because sometimes the answer to one question suggests another.

Senator HENNINGS. You do not want it in the interrogatory form?

Senator ERVIN. I certainly do not, because one question sometimes in order to elucidate an answer to it, you have to ask another question.

I might state Mr. Young is a man well-versed in this field by reason of the fact he has worked——

Senator HENNINGS. Indeed he is. We have great respect for Mr. Young. I just want to preserve as best I can within my limited ability to do so some semblance of regular order.

Of course committee counsel ordinarily do not examine witnesses.

Senator ERVIN. No, sir.

Senator HENNINGS. Unless counsel be of the subcommittee having the matter under his jurisdiction.

Mr. Young has not been working with the committee on constitutional rights, and I must say with all respect to him, though he certainly has that right to do so, he has taken a rather adversary position and that is quite all right, but I do not think Mr. Young should be allowed the range of latitude in examining witnesses.

Senator ERVIN. Mr. Chairman, I ask it only on my own behalf and not Mr. Young's behalf. I could take between now and next week and spend Saturday night, as I have been doing on these other bills.

Senator HENNINGS. Very well.

I shall hold, if there is no objection that Mr. Young may inquire. I want to be courteous to the Senator from North Carolina.

Senator ERVIN. I would certainly appreciate that.

Senator HENNINGS. And Mr. Young as well.

Senator HRUSKA. Mr. Chairman, I shall not object, but I do think there is great merit to what the chairman has suggested.

Our witness has been gracious; he has been patient and has demonstrated he is possessed of a lot of physical and other stamina but I imagine even those things have their limitations, and I would suggest that if the examination is not too prolonged that we go forward with it.

Senator ERVIN. I was just going to suggest that the witness has been patient, but I would say he is like the chairman of the committee. He is an agile youth and I unfortunately can no longer claim credit to that distinction.

Senator HENNINGS. Thank you.

Mr. BROWNELL. I would like to associate myself with Senator Hennings' remark.

Senator ERVIN. So far I have been sitting up to about midnight and I can do that tonight and tomorrow night.

Mr. BROWNELL. You did not see that picture of me at the witness stand yesterday I guess or you would not be calling me a youth.

Senator ERVIN. But I would ask if we possibly can——

Senator HENNINGS. Let us not get into a discussion back and forth about it, gentlemen.

As long as it is reasonable and productive information, and Senator Hruska has agreed to the same proposition, I am sure Mr. Young will govern himself as he always has with straightforwardness.

So let us proceed without wasting further time.

Mr. YOUNG. General, if I may take up a few little housekeeping items of the bill before we get into the merits of it and demerits of it as the case may be, you stated in your testimony before the House in the provision wherein you are asking for an additional Assistant Attorney General, that you wanted a lawyer to fill that job. I notice in looking at S. 83, page 14 where that provision is found in line 9, we usually include the words after "Assistant Attorney General" the words "learned in the law."

I presume you have no objection to an amendment such as that?

Mr. BROWNELL. No, I would have no objection to that.

Mr. YOUNG. Another small housekeeping rule in the Senate bill here, on page 15 after the paragraph ending on line 7, I notice a sentence——

Senator HENNINGS. If I may interrupt, I think the Attorney General might give us the benefit of the definition of one who is learned in the law.

Senator HRUSKA. Do you want him to produce it forthwith?

Senator HENNINGS. I have been practicing law for 30 years and I have never felt that I was.

Proceed, Mr. Young.

Mr. YOUNG. In line 7 a sentence has been left out of S. 83. The sentence is as follows:

> In any proceeding hereunder, the United States shall be liable for costs the same as a private person.

I presume that is an oversight.

Do you want that sentence in or out?

Mr. BROWNELL. I would stand on my statement in the prepared statement that I made.

Mr. YOUNG. In your testimony last year before the last Congress you stated that you would be in favor of a conflict of interest waive of those statutes and a bill for the selecting of the members of the Commission.

Are you still in favor of that?

I notice it is not in this bill.

Mr. BROWNELL. I would leave that to the judgment of the Congress.

Mr. YOUNG. As to the rules of procedure, which is an important housekeeping section in this bill, to give you some of the background, the old bill, H. R. 427, was the Celler bill last Congress in the House. The procedure was to strike out the enacting clause and put in the place of Congressman Celler's words this so-called administration bill.

When the bill was reported to the Senate floor or the House floor, rather, there was included in it by amendment these rules of procedure.

In your testimony before the House, you were of the opinion at that time, that is the House of this Congress, that the rules perhaps should stay in, and in your testimony here you are of the opinion that the rules should be deleted.

I believe your change in opinion, at least I agree with it, is commendable. In that regard I would like to read you about five sentences which I believe will illustrate why the rules of procedure as drafted into the bill have destroyed the Commission so that it is unable to operate.

For instance, section 105 (e) of the bill provides in certain cases for subcommittees with a minimum of two members to carry on certain purposes.

Opposed to this we have section 102 (a) in the rule which provides for any subcommittee including one-man subcommittees.

2. Section 105 (e) provides for the Commission or subcommittees with a minimum of two members holding hearings at such times and places as deemed fit, whereas section 102 (c), the rules, it is provided that hearings can only be held upon a majority vote of the Commission.

3. Section 105 (e) provides for the issuance of subpena over the signature of the Chairman of the Commission or the chairman of a subcommittee, whereas section 102 (v) provides for the issuance of subpenas only by the Chairman of the Commission, not by the subcommittee chairmen, and also only upon written notice to all members of the Commission.

4. Section 105 (a) provides for the staffing of the Commission in order with the civil-service and classification laws, whereas section 102 (w) provides for the staffing of the Commission subject only to a majority vote of the members.

Lastly, section 104 (b) provides for the submittal of interim reports by the Commission to the President.

Section 102 (f) would permit reports only after certain procedures of presentations to the Commission.

Finally, the provisions relating to hearings in section 102 and the rest of the bill, namely, sections 104 and 105 are so opposed to each other and different that it is impossible to see how the Commission would operate.

I do not know whether those have been called to your attention or not, but I would like another statement from you, if you wish, sir,

as to whether these rules should be included in the bill or expunged from the bill.

Mr. BROWNELL. I think I would stand on my prepared statement there.

Mr. YOUNG. Your prepared statement, as I recall, was that you preferred them out?

Mr. BROWNELL. Before this committee.

Senator HENNINGS. In other words, Mr. Attorney General, you have not changed your position since yesterday?

Mr. BROWNELL. That is right.

Mr. YOUNG. General, in the Republican platform of 1956, we have a provision concerning use of force or violence relating to the school segregation cases mainly, in which the Republican Party takes a definite stand against the use of violence in the enforcement of court decrees in these cases.

We also have a similar provision in the Democratic platform in which they reject all proposals for the use of force to interfere with the orderly determination of these matters by the courts.

In that regard, I call your attention—I will read it for you, the statement is short— we have a civil-rights statute on the books which has not been mentioned here (42 U. S. C. 1993):

> Aid of military and naval forces:
> It shall be lawful for the President of the United States or such person as he may empower for that purpose to employ such part of the land or naval forces of the United States or of the militia as may be necessary to aid in the execution of judicial process issued under sections 1981 through 1983 or 1985 through 1992 of this title, or as shall be necessary to prevent the violation and enforce the due exemption of the provisions of sections 1981 through 1983 and 1985 through 1994 of this title.

Those are civil rights provisions in the law.

We have another——

Senator HENNINGS. Mr. Young, were not those so-called "force bills"?

Mr. YOUNG. Yes. This is a bill giving the President of the United States—

Senator HENNINGS. To set up military districts in the South after the war?

Mr. YOUNG. Yes, sir.

Senator HENNINGS. They are known as the "force bills."

Mr. YOUNG. But they give permissive power of the President to send the Armed Forces in certain areas for enforcement of court decrees. There has been a deal of worry, General, as you know, as to how far the Federal Government is prepared to go in the enforcement of the court decrees in segregation cases.

I would like an expression from you now as to whether this statute is intended at any time or has it been discussed, as being used for enforcement of these decrees?

Mr. BROWNELL. I am rather disturbed by you even raising these points, because, as I said so many times, public statements made by persons who intimate that there is any such thought in the minds of anyone here in Washington to use the militia in these cases does not represent the true state of facts, and I frankly think that the only reason it can be brought into the discussion at all is to confuse the issue.

I do not know of any responsible public official of any party of any branch of the Government that has made any statement that would even lead to an inference that there is any such thought in the minds of the Congress or the courts or the executive branch of the Government.

Mr. YOUNG. It is possible to do it under that statute, however, is it not, General?

Mr. BROWNELL. There are other statutes that would have to be considered in connection with that, and I think you will find the general rule is that the Governor of the State must request the President.

We do not want to take away any supplementary aid which the Governor of a State may want.

Mr. YOUNG. I think, General, you have reference to the Governor's right to call for armed help in the case of insurrection. This statute applies to the enforcement of judicial decrees. To go one step further in your platform, you also have a statement as follows:

This progress—

referring to the progress between the races—

must be encouraged—

and there they are referring to the court decrees—

and the work of the courts supported in every legal manner by all branches of the Federal Government to the end that the constitutional idea of equality before the law, regardless of race, creed, or color, will be steadily achieved.

Those are mandatory words in the platform—every legal manner must be carried out for the enforcement of those decrees.

Would you care to comment on that, sir?

Mr. BROWNELL. Yes; I think it is rather irresponsible to even bring it into these discussions.

No one has had in mind any use of the militia in this situation, and I don't think that there should be any implication that they do.

Mr. YOUNG. The point is, General, that I am asking you, sir, the power resides in the President to do this, does it not?

Mr. BROWNELL. The President is presumed to act in a constitutional way, and I do not think that there is any indication that he is not going to.

Mr. YOUNG. Does he have the power, under this statute to do that?

Senator HENNINGS. If counsel will yield, is counsel getting at the business that the President of the United States might send troops down to the States of the late Confederacy and enforce these things at the point of a bayonet?

Is that what this discussion is leading towards?

Is that the purpose of this examination?

Senator ERVIN. Mr. Chairman, if you will pardon me, this statute is not restricted. It exists as to all the States of the Union.

Mr. BROWNELL. I frankly don't think that it would be appropriate to have an exercise in the interpretation of that statute.

Senator HENNINGS. My ancestors having come from Virginia and Georgia I think I can speak of the late Confederacy with a certain amount of understanding.

Senator ERVIN. It applies to all States. It is on the books.

Mr. BROWNELL. I am sure the purpose of the questioning is laudable, but the effect of it is, it seems to me, to confuse two unconnected things.

Since there is not the slightest suggestion on the part of any responsible public official of bringing in matters of the militia into the civil-rights area, I think it would be quite misleading really to continue with an abstract discussion of a matter which is not pertinent to the main line of our inquiry here this morning.

I may be out of my province in suggesting that, but I really feel that deeply.

Senator HENNINGS. As the Attorney General well knows, we cannot conduct these proceedings like a court, nor can we quite adhere to the rules of relevance, germaneness and so on.

Would counsel undertake to tell us what the purpose of this examination is?

Mr. YOUNG. I would be happy to, Senator.

The power is there; you have a situation in the South today in the school cases where one State legislature——

Senator HENNINGS. Are any of those bills before the committee?

Mr. YOUNG. Yes, sir; the power to enforce decrees as I have read here would apply to this statute, S. 83 as proposed.

Senator ERVIN. In other words, that would apply to the proceedings which would be brought under the amendments that would empower the President to use the Navy, the Army and even call out the militia to enforce those judicial decrees that might be in and under these amendments.

We think it bears directly on whether the Congress should or should not adopt such amendments.

Senator HENNINGS. S. 83 is the so-called administration bill introduced by Mr. Dirksen with a number of cosponsors, all of the Attorney General's own political party.

Now the Senator—and I make no point of that except to indicate—does the Senator from North Carolina and do you, Mr. Young, undertake to make the point that the President of the United States, even though he may have the power under a statute during the reconstruction days—after the war of 1861 to 1865—are we getting to that now?

Is that the point?

Senator ERVIN. Mr. Chairman, the point is this: The Attorney General has asked us to amend the law so as to allow him to resort, among other things, to injunctive process, among other things to enforce section 1985 of title 42 of the United States Code, and this statute which Mr. Young has called to the attention of the Attorney General and this committee makes it lawful for the President of the United States or such person as he may empower for such purpose to employ such part of the land forces or the naval forces of the United States or the militia as may be necessary to aid in the execution of judicial process issued under the specified sections, including section 1985, "as shall be necessary."

He does not even have to wait for the execution of judicial process, but "as shall be necessary to prevent the violation and enforce the execution" of various sections including one of the sections he is asking that we amend.

Senator HENNINGS. Reading from United States Code Annotated, at pages 1220-1221, the derivation seems to have been under the acts of April 9, 1866, Statute 29, May of 1870, and no cases whatsoever under that provision ever arising.

Senator ERVIN. But that provision is still in existence. It is in Revised Statutes, section 1985, and in a section of the United States Code to which allusion has been made.

I think the question of whether that power exists is something that any Senator, when he goes to extending jurisdiction, goes to amend these statutes, would want to know something——

Mr. BROWNELL. I am glad you corrected yourself on that because this program does not extend the jurisdiction of the Federal Government. Whatever power is there now, the constitutional power of the President remains exactly the same. We are not extending the Federal jurisdiction one bit.

Senator ERVIN. But the result of these amendments, if they are adopted, is to extend the power of the President under this statute to call out the Army or the Navy or the militia to enforce judicial decrees in the new cases to be authorized by these amendments so I think it is decidedly germane to the inquiry.

Senator HRUSKA. Mr. Chairman, it seems we are getting right back to that situation where the Senator is insisting "Yes" and the Attorney General is insisting "No."

Now until we can resolve that difference, why I don't know how much continual benefit will flow from a continuance of this discussion, as interesting as it might be from an academic viewpoint.

Senator ERVIN. It is not entirely from an academic standpoint. We are not debating this point any further, but we do think we are entitled to make a record here that will show that if this bill is passed, that it will create a new type of remedy in which judicial decrees can be entered, and under which the President of the United States under existing law can enforce by the use of the Armed Forces of the country, so Senators may know what they are voting for.

Senator HENNINGS. Or any State under the police power can likewise exercise that, can it not, under the New Orleans slaughterhouse case and——

Mr. BROWNELL. Mr. Chairman, I believe there is in here an implication that the President of the United States would act recklessly if not unconstitutionally, and I just cannot sit by and have the record contain any such implication of that.

I really feel that this has gone far enough. It has no place in these proceedings, and I personally cannot stay here and allow any such implication to be drawn.

Now let's have a ruling on that.

Senator HENNINGS. Mr. Attorney General, as you know, I have tried to be as impartial and objective as I can at these hearings in the course of these inquiries, and I don't like to limit any Senator or counsel in asking questions, but I do think that we can get so far afield on the subject as to enter the realm of Alice in Wonderland sometimes.

I think it would be perfectly appropriate if the Attorney General so desires, to file a brief on this subject or a memorandum.

Mr. BROWNELL. I would respectfully ask for a ruling, Mr. Chairman, as to whether or not this line of questioning is within the authority of the committee.

Senator HENNINGS. As the Attorney General well knows, this is not a court. We are not bound by any rules whatsoever.

Mr. BROWNELL. We are certainly bound by rules of proper respect being paid to the President of the United States.

Senator HENNINGS. If I were the Attorney General, I know exactly what I would rule, but under the general proposition that every Senator has the right to ask questions that are not demeaning nor degrading nor insulting to the witness, the Chair is always in the difficult position in matters of this sort.

I have already expressed myself about what I think is the relevance or germaneness of this line of inquiry. I do want to say that I hope the gentlemen will conduct themselves and will direct their inquiries to matters of substantive and procedural law and not go so far afield as to bring into minds, into the ordinary minds at least, implications that we are going to have military districts set up in the South.

Senator ERVIN. Mr. Chairman, neither Mr. Young nor myself has intimated that we think that President Eisenhower is going to call out the Armed Forces of the Nation to enforce decrees entered in the new type of proceedings which the Attorney General asks the Congress to authorize. But it is germane to this proceeding and it is a matter that ought to be considered seriously by the Congress, whether or not Congress is going to authorize a new type of suit to be brought by the Attorney General of the United States, while there is upon the statute books of the United States a statute which provides that the President of the United States has the power, regardless of whether he intends to exercise it, has the power to call out the Armed Forces of the Nation or the militia to enforce those decrees in the several States of the Union.

In fact, the statute is broader than that, but that is the part that is germane to this inquiry, and I as a Senator, when I go to vote on legislation, I am not concerned about what a particular occupant of an office may do under that legislation, but I am concerned about the power which the occupant of that office may exercise.

I think this is directly germane, that the American people should know whether this new procedure carries with it a power in the President to enforce the decrees which may be entered in the new proceedings by the Armed Forces of the Nation.

Therefore, it is very germane.

Mr. BROWNELL. Is there a way in which the committee can rule on this?

Senator HENNINGS. Does the Attorney General have any observation on that?

Mr. BROWNELL. I would ask that the members of the subcommittee——

Senator HENNINGS. The Chair, Mr. Attorney General, I might say is not—according to my understanding of inquiries conducted by committees or subcommittees—is not empowered to rule as to germaneness or relevance.

Mr. BROWNELL. Is it proper for me to make a request of Senator Ervin?

Senator HENNINGS. We know in these investigations over the years that discussions range very far sometimes. However, I think it is indeed proper for you to make any observation please, sir.

Mr. BROWNELL. Senator Ervin, I wonder in view of the danger of misunderstanding of this line of questioning, if I might request Mr. Young through you not to proceed any further within this line.

Senator ERVIN. Mr. Attorney General, what is the danger of this line of questioning, because all this is calculated to do, as I see it, is to elucidate the truth with respect to what kind of processes are possible under the law for the enforcement of the decrees to be entered in the new type of proceeding which these amendments ask us to authorize.

Mr. BROWNELL. I don't care to debate it, but I would like to press the request and have a yes-or-no answer, if I am entitled to that.

Senator ERVIN. In other words, Mr. Attorney General——

Senator HENNINGS. Mr. Attorney General, you are entitled to that indeed, sir. You are a guest here and are a voluntary witness and we want to accord you every courtesy.

Mr. BROWNELL. Thank you, sir.

Senator HENNINGS. On the other hand, the chairman, or indeed the committee, according to my small experience in such matters, cannot rule as to germaneness or relevancy because that isn't the way we work. We don't operate as courts. By the same token, the Senator is entitled to ask any question he pleases, provided that it is within the general limitations of propriety and reasonableness, and not degrading or insulting in any way. That, of course, we wouldn't stand for and I would not preside over such conditions.

Mr. BROWNELL. Did Senator Ervin answer my question, Mr. Chairman?

Senator HENNINGS. Now may we go back, please, Mr. Reporter? I think the Attorney General asked a question of the Senator from North Carolina.

Senator ERVIN. Mr. Chairman, I'd hate to refuse any request of the Attorney General, but all we are doing is asking the Attorney General about the laws of the United States which would be brought into operation or which could be brought into operation in this new type of proceeding, if we passed the amendments that have been urged upon us. On the other hand I consider it most important for the people. I have said all the time that all I want is an adequate opportunity to develop a case that the people of the United States will know what they are getting, and where the Senators and the Congressmen of the United States will know what they are getting if they pass these amendments. Now, I contend that it reminds me of Omar Khayyam when he spoke about the wine sellers. He said, "I wonder if what the sellers buy is one-half so precious as the stuff they sell."

I want the American people and the Congress to know that if these amendments are made, what it is they are getting, so that they may determine whether what they are to get is half as precious as what they are relinquishing. Therefore, I think it is very germane, and that this country is entitled to know and consider whether Congress ought to pass the law to create a new type of proceeding, judgments of which could be enforced by the Army and the Navy and the militia, and I think that is wholly germane. We want to find out if what we are getting is half so precious as the stuff we are relinquishing.

Senator HENNINGS. I think probably the learned Attorney General could answer that very briefly.

Mr. BROWNELL. I don't know as there is any question involved in that statement. I take it here——

Senator HENNINGS. It was something about Omar Khayyam.

Senator ERVIN. Also something about the proposed amendment. Also about section 1993 of title 42 of the United States Code as it now exists.

Mr. YOUNG. Mr. Chairman, may I make a statement, please?

Senator HENNINGS. You may, Mr. Young.

Mr. YOUNG. I believe I should withdraw from this cross-examination. I think it would be more appropriate if I got off later in the week or next week, off this podium up here and took the witness chair and testified perhaps as a witness. In that case the improprieties would be relieved. The Attorney General would not have to put up with this line of questioning from a staff member of a Senate committee. I believe it will suit better Senator Hruska, who has some reservations concerning this line of procedure.

I am sure it would please you better. The only propriety left, if I do that, will be—I'd be happy to do it.

Senator HENNINGS. Mr. Young, it isn't a matter of pleasing anybody.

Mr. YOUNG. I know it, sir.

Senator HENNINGS. It is a matter of eliciting certain facts. As long as you confine your examination, sir, to the relevant and pertinent matters at issue, I feel it my duty to allow you to continue.

I am sure the Attorney General is quite capable of taking care of himself. However, if Mr. Young would like to testify on this point, in order to obviate any further—may I have your attention, Mr. Young, please.

Mr. YOUNG. Yes, sir; I beg your pardon.

Senator HENNINGS. If Mr. Young would like to, in order to obviate any further discussion on this point, present himself as a witness next week, of course, we will be very glad to hear from him, and I want Mr. Young to know that because he is a staff member; I do not mean that in any way to demean him or lessen his stature.

Mr. YOUNG. I would prefer to withdraw and reserve a right, if I may, to testify.

Senator HENNINGS. Very well. Is that satisfactory to the Senator?

Senator ERVIN. That's entirely satisfactory to me, Mr. Chairman, as far as the provisions of part 1 relating to the provisions to establish a commission, and part 2, the provisions to authorize another Assistant Attorney General, I have no questions to ask on that score myself.

Senator HENNINGS. May I ask, is that satisfactory to you?

Senator HRUSKA. It is satisfactory, Mr. Chairman.

Senator HENNINGS. As we all know, in these proceedings we do have to go along with considerable latitude, and I just wanted to ask this question. The Attorney General has indeed been very cooperative, most patient. Will we require his presence next week?

Senator ERVIN. Not so far as I am concerned, Mr. Chairman.

Senator HENNINGS. Unless something unusual arises, we will try to accommodate the Attorney General.

Mr. BROWNELL. I appreciate very much your courtesies during the hearings.

Senator ERVIN. I would like to make this observation. I appreciate the patience of the chairman and the patience of Senator Hruska and the patience of the Attorney General with me, and I want to say that I hated not to accede to the request made by the Attorney General a

while ago, but I could not properly perform my duty as a Senator of the United States if I acceded to that request.

I am very much convinced, as I have said before—and this will be the last statement I have got to make today—that I am fighting to preserve the rights for the benefit of all Americans, and everything I have done has been done in good faith and in the honest belief that it was germane to the inquiry. Now it is possible that all of us sometimes may wander off.

Senator HENNINGS. I don't think anybody who knows the Senator from North Carolina has any doubt as to his sincerity and as to his honest convictions.

Senator ERVIN. I have no further questions of the Attorney General.

Mr. SLAYMAN. Mr. Chairman, the Attorney General was going to have his staff furnish us certain information. I prepared a memorandum for you. One copy might go in the record, without objection, and the other to Mr. Olney.

(The document referred to is as follows:)

FEBRUARY 16, 1957.

Memorandum to: The Honorable Thomas C. Hennings, Jr., Chairman, Senate Judiciary Subcommittee on Constitutional Rights.

From: Charles H. Slayman, Jr., chief counsel and staff director, Senate Judiciary Subcommittee on Constitutional Rights.

Subject: Significant data to be furnished by the Department of Justice for inclusion in the printed record of the Senate civil-rights hearings of the Senate Judiciary Subcommittee on Constitutional Rights.

The following information would be helful in making the record of the present Senate civil-rights hearings inclusive of available pertinent technical data:

1. A copy of the remarks of A. B. Caldwell, Chief of the Civil Rights Section of the Department of Justice, at the University of Pennsylvania Law School (revised to January 1957): concerning activities of the Civil Rights Section.

2. Testimony of Warren Olney III, Assistant Attorney General in charge of the Criminal Division, Department of Justice, presented to the Senate Rules Subcommittee on Privileges and Elections, in the 2d session of the 84th Congress; brought up to date.

3. Statistics on all the Federal statutes administered by the Civil Rights Section: together with numbers of complaints received by the Department of Justice under each statute, annually since 1940, by States, and ultimate disposition with regard to the complaints (i. e., complaints found frivolous; substance of complaints held not to involve Federal jurisdiction under the statutes; indictments sought; indictments obtained; convictions obtained; convictions upheld on appeal.)

4. History of civil rights statutes themselves:

(*a*) Original text of statute, title, and date of enactment.

(*b*) Subsequent amendments.

(*c*) Statutory construction by judicial decisions—principal cases (e. g., the "2d" Williams case, narrowly construing sec. 241, title 18, U. S. C.).

(*d*) Judicial decisions upholding the constitutionality of these statutes—principal cases.

(Subsequently, the following material was received from the Department of Justice, for inclusion in the record:)

DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, March 5, 1957.

Hon. THOMAS C. HENNINGS, Jr.,
Chairman, Senate Judiciary Subcommittee on Constitutional Rights,
United States Senate, Washington, D. C.

DEAR SENATOR: On February 16, 1957, at the close of the testimony given by the Attorney General, Mr. Charles H. Slayman, Jr., handed to Assistant Attorney

General Warren Olney III a memorandum requesting further information for inclusion in the record of the subcommittee hearings on civil rights legislation. The purpose of this letter is to respond to each of the four requests made in that memorandum.

(1) A copy of the remarks of Arthur B. Caldwell as requested is attached.

(2) A copy of the testimony of Warren Olney III, Assistant Attorney General, as requested is attached. The most recent information concerning the incident about which Mr. Olney testified was contained in the prepared statement by the Attorney General which is now in the record of your hearings, and in the attached letter to Congressman Celler.

(3) The records of the Department of Justice do not give us a sufficient basis to furnish the statistical data requested concerning the operation of the Civil Rights Section. The task of going through the existing records to attempt to construct such data would be too great to permit our completing it in time to be included in the record of your hearings and we doubt that the results which could be obtained would be of sufficient reliability to justify the time and expense.

(4) I am attaching a brief history of the civil rights statutes.

Sincerely,

WILLIAM P. ROGERS,
Deputy Attorney General.

THE CIVIL RIGHTS SECTION—ITS FUNCTIONS AND ITS STATUTES

An address by Arthur B. Caldwell, Civil Rights Section, Department of Justice, before the civil rights class of the summer session of the University of Pennsylvania, Philadelphia, Pa., on July 16, 1953 (revised January 1957)

The Civil Rights Section was created as a unit of the Criminal Division in 1939. The Attorney General's order establishing the section constitutes a sort of corporate charter for the unit and is still broadly descriptive of its functions. The order reads in part as follows:

"The function and purpose of this unit will be to make a study of the provisions of the Constitution of the United States and acts of Congress relating to civil rights with reference to present conditions, to make appropriate recommendations in respect thereto, and to direct, supervise, and conduct prosecutions of violations of the provisions of the Constitution or acts of Congress guaranteeing civil rights to individuals." (Order No. 3204, Feb. 3, 1939.)

The Section consists normally of 8 lawyers and 5 stenographers. One attorney deals exclusively with election law violations, and another devotes part of his time to this field. Another attorney deals largely in specialized areas involving the Fair Labor Standards Act, the Kickback Act, and various railway labor laws. The other attorneys on the staff are assigned to civil rights and involuntary servitude and slavery violations. The head of the Section assigns cases, correlates activities, generally supervises the work, and is responsible to the Assistant Attorney General in charge of the Criminal Division.

Federal civil rights enforcement involves a delicate and technical function. Almost all violations of the Federal civil-rights statutes are also violations of State law, and the important matter of accommodation between Federal and State interests is always lurking in the background. Under the substantive civil-rights statute, as will be more extensively discussed later, "a necessary party" defendant must be a State or local officer. (The statute also applies to Federal officers.) Many times the officer holds great power in his community, as is often the case with sheriffs or police chiefs, and sometimes he has statewide prominence. The head of an entire State police organization was tried and convicted under the civil-rights statute[1] for the brutal torture of a murder suspect, and the mayor of a large suburban community was among those tried for willfully permitting vicious race riots.[2] Though, happily, instances of participation in civil-rights violations by such high officials are not common, they disclose an aspect of our work peculiar to the civil-rights field and are illustrative of its complexity—our defendants are usually not the criminal type; often quite the contrary. Conversely, the civil-rights victim, as is further noted a little later, is often not by any means a respectable or respected member of the community.

Besides presenting the delicate question of the Federal-State relationship, civil-rights enforcement involves technical considerations such as are not usually present in other fields of law. The application of the Civil Rights Conspiracy

[1] *Apodaca* v. *United States*, 188 F. 2d 932.
[2] *United States* v. *Konovsky*, 202 F. 2d 721.

Statute, for example, to police brutality conspiracy cases is still unsettled in the law.[3]

For these and other reasons, there is a need for close supervision and correlation in this field such as does not usually exist elsewhere. Therein lies the reason for the establishment and existence of the Civil Rights Section.

Notwithstanding these considerations, we are particularly sensitive to the views of the United States attorney, who is on the scene and familiar with the local background. "Washington interference" is the usual defense cry in a civil-rights prosecution, but it should be borne in mind that civil-rights cases are usually prosecuted by the United States attorney, a native of the community, before a local district judge, after investigation by FBI agents who usually reside in the community, before a petit jury of "natives," after indictment by grand jurors from the area. Though "Washington interference" will still be raised as a defense cry, it has little substance.

The Civil Rights Section keeps close supervision over every case, from the receipt of a complaint to final appellate disposition. With the assistance of the United States attorney, the section guides the nature and course of the FBI investigation, making specific suggestions for its course as the story unfolds.

The complaint of a civil-rights violation may arise in one of many different ways. The FBI might pick it up, either on its own initiative or because the victim has come to it and reported the incident. Or, the complainant may, in the first instance, go to the United States attorney, whereupon, if the complaint has apparent substance, he is referred to the FBI for a formal interview. Sometimes, newspaper or magazine articles are a source of the complaint. Occasionally a local official is the complainant. A casual inquiry from a professor in the South led to an important civil-rights prosecution in the West.[4] Anonymous complaints often result in full investigations and sometimes prosecutions. A complaint—regardless of source or motivation if it states a *prima facie* case—is investigated by the FBI to ascertain if substance to the charge of a civil-rights deprivation exists.

The typical civil-rights victim is oppressed by poverty, ignorance, or both, and may well even have a criminal record or be a convict. "It is a fair summary of history," as Justice Frankfurter has remarked, "to say that the safeguards of liberty have most frequently been forged in controversies involving not very nice people."[5] Nor is this strange. The National Commission of Law Observance and Enforcement reported that legal restrictions are not likely to give officers serious trouble in the case of persons of no influence or little or no means.[6] It is because we are mindful of these considerations, that the Civil Rights Section, and the United States attorneys give every complaint the benefit of the doubt and, where a prima facie violation of a statute is alleged, proceed to the investigative stage, at least to the point of being completely satisfied that no illegal deprivation of a federally secured right has occurred. The sifting process is long, arduous, and often discouraging. Only one complaint out of a very large number will lead to prosecution. Some complaints, of course, emanate from persons under a mental or emotional disability; but usually these can be winnowed out easily. Likewise, many persons seeking private legal advice often come to the Government, only to be told that this is not our function. Throughout the "culling" process, the Civil Rights Section is active and is, as in all other stages, available to advise with the United States attorney whenever necessary.

When the Federal Bureau of Investigation has completed its investigation and it has been determined by the Civil Rights Section and the United States attorney that a given case is sufficiently serious to warrant further action, the case is presented to the grand jury. Although title 18, United States Code, section 242, being a misdemeanor statute, does not require prosecution by indictment, it is usually not considered advisable to have the United States attorney merely file an information, as he can do in such instances. The rule, however, is not invariable, and informations are sometimes filed in clear-cut cases where there is little doubt of the occurrence of the violation, and no serious trial impediments are likely to occur. Sometimes, it may be noted (though this occurs only rarely) that an information will be filed even though a grand jury has

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[3] *United States* v. *Williams*, 341 U. S. 70.

[4] Trial of State Penitentiary Warden Roy E. Best for violation of sec. 242 in Federal district court in Denver, Colo., June 1952.

[5] See Justice Frankfurter's dissent: *United States* v. *Rabinowitz*, 339 U. S. 56 at 69.

[6] Vol. II, Report on Criminal Procedure, 1931, p. 19.

failed to indict. This happened in the notorious Castor Oil case in West Virginia,[7] but such unusual tactics are reserved for cases where violations are clear but local feeling is such as to prevent the grand jurors from being objective. Of course, usually in such cases there is even less chance for a petit jury to be sympathetic to the case, though be it noted that in the Castor Oil case the petit jury convicted even where the grand jury had failed to indict. This, again, indicates some of the inherent complexities in the civil-rights field and once more illustrates the need for the existence of the Civil Rights Section to advise and counsel and give the benefit of its more than 10 years of experience in the field.

The Section often prepares indictments at the request of United States attorneys. It is glad to perform this function and experience has shown, particularly in areas where civil-rights prosecutions are rare, that the procedure is well worth the effort. In any event, it is always suggested that United States attorneys submit indictment forms in each case to the Civil Rights Section for its approval prior to grand-jury action.

Most civil-rights cases, as previously noted, are tried by the United States attorneys. On occasion, however, there may be a need for a special prosecutor, and appropriate arrangements will be made through the Civil Rights Section. In such instances, the services of an attorney from the Criminal Division trial staff can be secured, or, in unusual and highly important cases, arrangements may be made for securing the services of a special prosecutor from the particular area. This is the exception and not the rule, however, and usually the United States attorney will handle the prosecution himself. If memorandums of law or briefs are needed, the Civil Rights Section will, if time permits, prepare such material.

Many appellate briefs have been prepared in the Civil Rights Section, and, again, it stands ready to prepare or assist the United States attorney in such function if requested to do so.

We have heretofore considered the more or less direct activities of the Civil Rights Section. In addition, however, the Section performs other functions. Amicus curiae briefs where important civil-rights questions occur may be prepared by the Civil Rights Section. The Section prepared such amicus briefs, for example, in a case before a special three-judge Federal court in New Mexico[8] and in a case before the Arizona Supreme Court.[9] The cases involved the right of Indians to vote in those States. The Section also prepared an amicus brief in support of the right of an Arkansas school board to be free from interference with its public-school desegregation program.[10]

The Civil Rights Section also acts as a sort of informal clearinghouse for civil-rights problems which do not involve criminal aspects. It is not infrequently called upon to advise with respect to matters involving human rights, such as genocide, in the United Nations area. The Civil Rights Section has also conferred with representatives of the newly organized Governments of Japan and Germany who were studying civil-rights problems and the approach to them in this country.

Over and above the performance of the regular work of the Section, various members have voluntarily performed valuable research in this technical field, much of which has been published in law journals over the years.[11]

In other ways, general functions not of a criminal nature are also performed by the Section, such as analyzing proposed legislation and making suggestions with respect thereto. The Civil Rights Section has frequent occasion to confer with representatives of the various organizations interested in civil-rights problems.

The statutes administered by the Section are divided roughly into three groups, as follows: (1) the civil rights and involuntary servitude and slavery statutes, (2) the Federal election laws, and (3) the labor statutes. Of these, the civil-rights statutes (secs. 241 and 242, title 18, U. S. C.) are responsible for the major portion of the Section's workload. The following is a discussion of some of the problems encountered in administering and supervising the enforcement of these important Federal laws.

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[7] *Catlette* v. *United States*, 132 F. 2d 902.
[8] *Trujillo* v. *Garley*, Civil No. 1353, D. C. N. Mex., August 11, 1948.
[9] *Harrison* v. *Laveen*, 67 Ariz. 337, 196 Pac. (2) 456 (1948).
[10] *Brewer* v. *Hoxie School District*, 238 F. (2d) 91 (C. A. 8, 1956).
[11] For list of law-review articles, by present and former members of the Section, see appendix A.

CIVIL-RIGHTS STATUTES, SECTIONS 241 AND 242, TITLE 18, UNITED STATES CODE

At the outset, it would seem appropriate to explore briefly our civil-rights background. The United States Constitution, as originally adapted, contained no Bill of Rights. However, shortly after the adoption of the Constitution, the First Congress passed and submitted 12 amendments to the States and, by 1871, 10 of these amendments, which we now know as the Bill of Rights, had been ratified.

In adding to the Constitution such guaranties as freedom of speech, press, and religion: the right peacefully to assemble and to petition the Government; freedom from unreasonable search and seizures; the right to due process of law; and prohibition against taking property without just compensation, our ancestors were not laying down novel principles of government. They were insisting on traditional guaranties and immunities—guaranties which the Declaration of Independence had declared inalienable and because of the deprivation of which they had risen in arms against a tyrannous government.

It is widely believed that the Bill of Rights was designed to protect individuals against deprivation of their rights by other individuals. Nothing could be further from the truth. The Bill of Rights was not intended to, and does not, afford the protection of the individual's liberties against the conduct of other individuals or of State governments. The Bill of Rights was an expression of fear and distrust of central government and an assurance that no despotism would arise to take the place of the one recently overthrown. In other words, the Bill of Rights set forth only what the Federal Government must not do to the people.

Until the Civil War, the individual looked to his State and community governments as the source and guardian of his personal rights. But post-Civil War problems forced a new approach, a shifting of emphasis in governmental scope and responsibilities. After the war, it became apparent that many States could not or would not fulfill their obligations to protect the individual liberties of all classes and kinds of persons. Consequently, the 13th, 14th, and 15th amendments were added to the Constitution with the purpose of abolishing slavery and securing to all persons as against the State and National Governments equality in the protection of individual rights and liberties. Successive Congresses launched a program to enforce these amendments. In addition to antislavery legislation, 5 civil-rights statutes, known as Enforcement Acts, were placed upon the statute books in the 10 years following the war.

These five statutes spelled out the guaranties contained in these amendments and provided serious penalties against State officers and private persons as well for violation of the rights. Congress, through these statutes, undertook to secure to all persons the right to vote; then protection of individuals against mob violence; the right to acquire and own property, to make contracts and have access to the courts; and the right of accommodation without discrimination in places open to the public. Some of these statutes were declared unconstitutional by the courts and others were repealed by Congress. By 1909, few of them remained. In fact, so far as criminal statutes are concerned, only what is now known as sections 241 and 242, title 18, United States Code, survived as fragments of this original legislation. The following is a discussion of these sections and their application in the light of their history and applicable court decisions.

SECTION 241, TITLE 18, UNITED STATES CODE

Section 241 reads as follows:

"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 imprisonment not more than ten years, or both."

This section is aimed at a criminal conspiracy to injure, oppress, or intimidate citizens (not aliens) in the exercise of federally secured rights and privileges. These rights are not enumerated in either section 241 or 242. They are to be found in various statutes and in certain portions of the Constitution, notably in the first eight amendments and in the 14th and 15th amendments. The

rights protected by section 241 are comparatively few in number because of the limitations on the Federal Government which exist under our system.

A. Statutory rights

The chief utility of section 241 for the enforcement of statutory rights has been as a criminal sanction for otherwise sanctionless statutes. Abridgment by more than one person of a right created by Federal statute which itself contains no penalty may, in the absence of a contrary congressional intent, be punished under section 241. Thus, the homestead laws, which provide machinery for obtaining title to land in the public domain on compliance with certain conditions, do not contain specific criminal provisions penalizing interference with the right the statutes grant. However, the Supreme Court has held that running a homesteader off his land, being a deprivation of the right acquired under the statute, is punishable under section 241, provided a conspiracy is involved.[12]

This theory appears applicable to any case of intimidation of a person who has personal rights under a Federal statute if the purpose of the coercion is to deprive him of his statutory benefits. Thus, under the social-security laws, the Fair Labor Standards Act, and other statutes, certain benefits are conferred on persons or protection is afforded them against lawless interference. Criminal sanctions to punish attacks by private persons or public officials absent in the above statutes appear to be available in section 241 because of the invasion of rights "secured * * * by the * * * laws of the United States."

B. Constitutional rights

The Constitution deals primarily with relationships between the Federal and State governments and between those governments and private persons. Therefore, abuse by one private individual of another gives rise to a deprivation of a constitutional right in comparatively few instances. Hence, section 241 has only limited application to the conduct of private persons. In the absence of special facts, the ordinary outbreak of mob violence, vigilante activity directed against Negroes, soap-box orators, religious groups, or others is not within the section. Such aggressions may appear to constitute deprivations of the rights to liberty or life, freedom of speech, freedom of assembly, freedom of religion, freedom from unlawful searches and seizures, or other invasions of personal rights mentioned in the Constitution. But these rights are rights against official action only and do not extend to the private behavior of one individual toward another. This situation is, perhaps, best summed up by Cushman, in his book entitled "Safeguarding Our Civil Liberties." At page 45, he says, "Broadly speaking it is the State and not the Federal Government which can prevent this kind of abuse (referring to private deprivation of civil liberties). No individual can possibly violate the Federal Bill of Rights which begins with the words: 'Congress shall make no law,' and has been held to restrict only the Federal Government. Nor can an individual violate the 14th amendment which clearly says 'no State' shall do the things forbidden."

In *United States* v. *Mosley*,[13] decided in 1915, the Supreme Court, speaking through Mr. Justice Holmes, said at page 387. "The source of this section [241] in the doings of the Ku Klux and the like is obvious and acts of violence obviously were in the minds of Congress. * * * But this section dealt with Federal rights and with all Federal rights, and protected them in the lump * * *." Until the decision in *Williams* v. *United States*[14] in 1951, it was thought that the rights "protected in the lump" included not only the comparatively few secured against private invasion but, also, those which the Constitution (principally the first eight and the 14th and 15th amendments) secures as against deprivation by State or Federal officers acting in their official capacities. However, in the Williams case, the Supreme Court divided 4 to 4 on the question as to whether this section could reach a conspiracy of officials acting under "color of law." Four members of the Court, in an opinion by Mr. Justice Frankfurter, held that the application of section 241 is limited to those rights which Congress can secure against invasion by private persons. If this opinion should ultimately prove to represent the law, the applicability of the section has been narrowed to such few situations as involve deprivations by private persons, such as the right to vote in Federal elections,[15] the right of a voter in a Federal election to have his ballot fairly

[12] *United States* v. *Waddell*, 112 U. S. 76 (1884).
[13] 238 U. S. 383.
[14] 341 U. S. 70.
[15] *Ex parte Yarbrough*, 110 U. S. 651.

counted,[16] the right to be free from mob violence while in Federal custody,[17] the right to assemble and discuss Federal problems,[18] the right to testify in the Federal courts,[19] the right to inform a Federal officer of a violation of Federal law,[20] the right to furnish military supplies to the Federal Government for defense purposes,[21] the right to enforce a decree of a Federal court by contempt proceedings,[22] the right, as a Federal officer, not to be interfered with in the performance of his duties,[23] the right to be free to perform a duty imposed by the Federal Constitution.[24] The individual must look elsewhere for the security of those basic liberties sought to be preserved in the Bill of Rights and in the 14th and 15th amendments from tyrannous and overzealous officials.

SECTION 242, TITLE 18, UNITED STATES CODE

Section 242, title 18, United States Code, is aimed at infringement of federally secured rights by the wrongful action of State or Federal Government officials. The section reads as follows:

"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, or 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."

At the outset, it will be observed that two distinct offenses are defined by this section:

1. The willful subjection of any inhabitant, under color of law, to the deprivation of rights, privileges, or immunities secured by the United States Constitution and laws; and

2. The willful subjection of any inhabitant, under color of law, to discriminatory pains or punishments on account of race, color, or alienage.[25]

Unlike section 241, section 242 is not a conspiracy statute and may be violated by a single individual. Further, the protection of 242 is not limited to citizens and, so far as the first offense referred to above, the section's protection extends to all inhabitants of any State, Territory, or district, regardless of race or class identification.

To be in violation of section 242, the act resulting in deprivation of federally secured rights must be done "willfully." In defining the word "willfully," the Supreme Court has stated in *Screws* v. *United States* that it is not enough that the wrongdoer have a general bad purpose or an evil intent to do wrong. He must have at the time he commits the offense a specific intent to deprive the victim of a Federal right which has been made specific either by "the express terms of the Constitution or laws of the United States or the decisions interpreting them."[26]

The act forbidden must be committed "under color of law, statute, ordinance, regulation, or custom." This phrase is synonymous with "color of authority." It means that the statute can be violated in the first instance only by persons occupying public office—Federal, State, or municipal—or persons who exercise governmental powers. A private individual may violate the statute only if he aids and abets such officials. The fact that the act proscribed must be committed by the officer in his official capacity does not mean that it need be authorized by some provision of a State or Federal law. Conduct may be punishable under

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[16] *United States* v. *Mosley*, 238 U. S. 383; *United States* v. *Classic*, 313 U. S. 299; *United States* v. *Saylor*, 322 U. S. 385.

[17] *Logan* v. *United States*, 144 U. S. 263.

[18] See *United States* v. *Cruikshank*, 92 U. S. 542, 552; *Powe* v. *United States*, 109 F. 2d 147, 151 (C. A. 5), cert. den., 309 U. S. 670.

[19] *Ex parte Quarles*, 158 U. S. 532, 536; *Nolen* v. *United States*, 178 U. S. 548, 462-463; *Nicholson* v. *United States*, 79 F. 2d 387 (C. A. 8); *Hawkins* v. *State*, 293 Fed. 586 (C. A. 5).

[21] *Anderson* v. *United States*, 269 Fed. 65 (C. A. 9), cert. den., 255 U. S. 576.

[22] *United States* v. *Lancaster*, 44 Fed. 885, 44 Fed. 896 (C. C. WD Ga.).

[23] *McDonald* v. *United States*, 9 F. 2d 506 (C. A. 8); *United States* v. *Patrick*, 54 Fed. 338 (C. C. ND Tenn.).

[24] *Brewer* v. *Hoxie School District*, 238 F. 2d 91 (C. A. 8, 1956).

[25] *United States* v. *Classic*, 313 U. S. 299, 327 (1941).

[26] 325 U. S. 91, 104 (1945).

this section even though it violates the express command of the law. This is made clear from the following quotation from the Classic case (p. 326):

"Misuse of power, possessed by virtue of State law and made possible only because the wrongdoer is clothed with the authority of State law, is action taken 'under color of' State law."

The gist of the offense defined by section 242 in each case is the deprivation of a right secured by the Constitution or laws of the United States. Among the more important of the rights secured are those defined in the 5th and 14th amendments, i. e., the right not to be deprived by either a State or the Federal Government of life, liberty, or property without due process of law, and the right not to be deprived at the hands of a State of the equal protection of the laws.

The willful taking of life by a person acting under color of law and contrary to due process would not only violate section 242 but would, also, constitute murder under State laws. A willful deprivation of property rights without due process of law, under color of authority, is likewise, a violation of the section. Such tactics may be a part of an extortion scheme [27] or may consist of confiscation of personal property or unwarranted interference with real property rights. The right to conduct a lawful business has been held to be a property right protected by the 14th amendment and, consequently, willful action of public officials to destroy a man's business would constitute a violation.[28]

The majority of prosecutions under this section have been concerned with the deprivation of liberty. Liberty includes personal security, [29] as well as freedom from physical restraint. It also includes freedom of speech and the press,[30] freedom to assemble peaceably,[31] to petition the Government,[32] to pursue a lawful calling,[33] to express and exercise religious beliefs,[34] to establish a home,[35] and to secure therein from unlawful searches and seizures.[36] The right to due process in this connection includes the right to a fair trial, which, in turn, encompasses a real, not a sham or pretended, hearing; [37] the right not to be tried by ordeal or summarily punished other than in the manner prescribed by law; [38] the right to be free from prison brutality—a right possessed even by convicts in State prisons; [39] the right not to be compelled to confess to an offense; [40] the right of a defendant in certain types of criminal cases to be represented by counsel; [41] and the right to a jury from which members of the defendant's race have not been purposely excluded.[42]

The foregoing rights are secured against Federal, State, and local officials alike, and any intentional interference with them by public officials may be punished under section 242. However, it must be kept in mind that section 242 may also be utilized to punish official interference with rights secured against infringement by private individuals. For example, the section is applicable to penalize an official who deprives a person of the right not to be held as a slave, or the right to vote at a Federal election, or the right of access to Federal courts,[43] or the right to inform Federal officers concerning Federal offenses,[44] or the right to be a witness in the Federal courts.

In addition to the rights enumerated above, the first eight amendments include certain rights secured only as against infringement by the Federal Government. Examples of these are the right not to be twice put in jeopardy for the same offense, the right to a speedy and public trial in a criminal case, and the right not to be held in excessive bail or subjected to cruel and unusual punishment.

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[27] *Brown* v. *United States*, C. A. 6, May 18, 1953.
[28] *Truax* v. *Corrigan*, 257 U. S. 312 (1921).
[29] *Lynch* v. *United States*, 189 F. 2d 476, 479 (1951), cert. den., 342 U. S. 831.
[30] *DeJonge* v. *Oregon*, 299 U. S. 353, 364; *Grosjean* v. *American Press Co.*, 297 U. S. 233 (1936).
[31] *Hague* v. *C. I. O.*, 307 U. S. 496 (1939).
[32] First amendment, United States Constitution.
[33] *Truax* v. *Raich*, 239 U. S. 33 (1915).
[34] *Cantwell* v. *Connecticut*, 310 U. S. 296 (1940); *Pierce* v. *Society of Sisters*, 268 U. S. 510 (1925).
[35] *Meyer* v. *Nebraska*, 262 U. S. 390, 399 (1923).
[36] *Wolf* v. *Colorado*, 338 U. S. 25 (1948).
[37] *Moore* v. *Dempsey*, 261 U. S. 86.
[38] *Screws* v. *United States*, 325 U. S. 91; see note 26.
[39] *United States* v. *Jones*, 207 F. 2d 785 (C. A. 5, 1953); *United States* v. *Walker*, 216 F. 2d 683 (C. A. 5, 1954), cert. den., 348 U. S. 959; *United States* v. *Jackson*, 235 F. (2) 925 (C. A. 8, 1956).
[40] *Williams* v. *United States*, 341 U. S. 97 (1951).
[41] *Powell* v. *Alabama*, 287 U. S. 45 (1932).
[42] *Smith* v. *Texas*, 311 U. S. 128 (1940).
[43] *Ex parte Hull*, 312 U. S. 583 (1941).
[44] *In re Quarles and Butler*, 158 U. S. 532 (1895).

Section 242 also reaches a State official who willfully acts so as to deprive a person of the equal protection of the laws. Official refusal on racial grounds to permit Negro children to attend a public school with white children would be a denial of the equal protection of the laws.[45] Such refusal could lead to prosecution under section 242.[46] Official separation of races on a public transportation system also denies equal protection of the laws [46a] and could likewise be prosecuted under that statute. In *Lynch* v. *United States*,[47] it was held that the phrase "equal protection of the laws" includes the right of a prisoner to protection from the officer having him in charge and, also, a right to be protected by such officer against injuries by third persons. In other words, according to this case, if an officer willfully turns a prisoner over to a mob or willfully permits a mob to take a prisoner from his custody, he is guilty of violating section 242. Thus, the Lynch case supports the proposition that willful official action and willful inaction resulting in the denial of equal protection may be penalized under the section. There seems to be no doubt but that the theory of this case would apply in other instances. Perhaps a good example would be the refusal of a State officer to permit a member of a minority group to engage in lawful work or the willful failure or refusal to restrain others attempting to deny him this right.[48]

APPLICATION OF SECTIONS 241 AND 242 TO ELECTIONS

Since 1884, it has been clear that the provisions of section 241 secure and protect the right granted by article I, section 2 of the Constitution to vote in Federal elections.[49] Later, in 1915, in the Mosley decision (*supra*, note 12), the Supreme Court extended the protection of the section to the right to have one's vote honestly counted. In 1941, the Court, in *United States* v. *Classic* (supra, note 15), included within the constitutional guarantee the right to vote and to have the vote honestly counted in a primary election involving candidates for Federal office where such primary is an integral part of the election machinery or, success therein is equivalent to election. Also, said the Court, the right to participate in such a primary is a right secured by both section 241 and section 242.

A most important and far-reaching result of the Classic decision is that it led to a reexamination by the Supreme Court of the "white primary" system which, for a long time, had been used in the Southern States as a device to deprive Negroes of an effective voice in the electoral process. Prior to Classic, the Court, in *Grovey* v. *Townsend*,[50] had held that the exclusion of a Negro voter from a party primary, pursuant to political party regulations, deprived him of no right guaranteed by the 14th or 15th amendment. After the Classic decision, the Supreme Court recognized that primary and general elections had been fused into a single instrumentality. The Court, therefore, overruled *Grovey* v. *Townsend* in *Smith* v. *Allwright* [51] and held that racial discrimination by a political party adopted, enforced, or permitted by a State is State action forbidden by the 14th and 15th amendments. This decision opened the way for Negroes to vote in primary elections whether they involve State or Federal candidates or both.

The courts have resisted any and all attempts to evade the plain implications of the Allwright decision. Following that decision, the State of South Carolina repealed all of its primary laws and thus attempted to leave the matter of holding primaries and the qualifications to vote therein entirely to the discretion of political parties or groups. But the Court of Appeals for the Fourth Circuit held that a primary under such auspices is, nevertheless, one of a two-step election process and that, consequently, the exclusion of Negroes from such primary, because of party rules, is State action constitutionally forbidden.[52] Similarly, the exclusion of Negroes from an unregulated preprimary held by an unregulated political association to endorse persons intending to participate as candidates

[45] *Brown* v. *Board of Education*, 347 U. S. 483 (1954); 349 U. S. 294 (1955).
[46] See *Brewer* v. *Hoxie School District*, 238 F. 2d 91 (C. A. 8, 1956).
[46a] *Browder* v. *Gayle*, 142 F. Supp. 707 (D. C. M. D. Ala., 1956), aff'd per curiam, 352 U. S. 903 (1956).
[47] See note 20, above.
[48] See *Truax* v. *Raich*, 239 U. S. 33 (1915).
[49] *Ex parte Yarbrough*, 110 U. S. 651.
[50] 295 U. S. 45 (1935).
[51] 321 U. S. 649 (1944).
[52] *Rice* v. *Elmore*, 165 F. 2d 387 (1947), cert. den., 333 U. S. 875 (1948); *Baskin* v. *Brown*, 174 F. 2d 391 (1949).

in a regular Democratic primary was recently struck down by the Supreme Court as State action violative of the 15th amendment.[53]

The situation respecting the applicability of sections 241 and 242 to elections and the right to vote therein may be summarized as follows:

1. In primary and general elections involving candidates for Federal office, conspiracies to deprive individuals of the right to vote and to have their vote honestly counted may be punished under section 241. The section applies whether the conspirators are private persons, officials, or both.

2. In such elections, a deprivation, by persons acting under color of law, of the right to have the vote honestly counted is punishable under section 242.

3. In such elections, a single private individual may not be punished under either section. However, a private individual who infringes or attempts to infringe the right to vote in a general election involving Federal candidates is subject to punishment under the provisions of title 18, United States Code, section 594.

4. In primary or general elections involving only State or local candidates, State action denying the right to vote because of race is contrary to the 14th (*Nixon* v. *Herndon*, 273 U. S. 536) and 15th amendments. Such action may, therefore, be punished under section 242. However, it would represent no violation of section 241 under the opinion of Mr. Justice Frankfurter in *Williams* v. *United States* (supra, note 3) (cf *Guinn* v. *United States*, 238 U. S. 347).

INVOLUNTARY SERVITUDE, SLAVERY, AND PEONAGE STATUTES

The Emancipation Proclamation issued by President Lincoln on January 1, 1863, freed all the slaves but did not destroy slavery; it merely outlawed it in certain States. To end forever the institution of slavery, a constitutional amendment was necessary. On February 1, 1865, therefore, the amendment that was to become the 13th amendment to the Constitution was submitted by the 38th Congress, and ratified on December 18, 1865. In simple but eloquent terms, the 13th amendment declares that:

"Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

Every form of compulsory service, including serfage and peonage, as well as slavery, clearly was abolished by the amendment. It denounces a condition and reaches every race and individual within the national jurisdiction.[54] Without implementation, however, the executive branch of the Federal Government was powerless to act in situations involving forced labor. Only the judicial branch, by virtue of its jurisdiction in civil or appellate matters, would have authority to apply and effectuate the paramount law, but only after the aggrieved persons instituted private and legal action or appeal from State action. Legislation, therefore, was necessary to give the amendment full force and effect.

Accordingly, Congress, on March 2, 1867, enacted the Peonage Abolition Act, entitled "An act to abolish and forever prohibit the system of peonage in the Territory of New Mexico and other parts of the United States." The criminal provisions of this act, now contained in section 1581, United States Code, are as follows:

"(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)."

On May 21, 1866, the President approved the so-called Slave Kidnapping Statute, now section 1583, title 18, United States Code. It provides:

"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 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."

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[53] *Terry* v. *Adams*, 345 U. S. 461.

[54] *Hodges* v. *United States*, 203 U. S. 1, 17 (1906).

The third and last statute dealing with involuntary labor is section 1584 of title 18, United States Code. Despite its title, "Sale Into Involuntary Servitude," it also covers the holding of another to involuntary servitude, which was added by the revisers of the 1948 Criminal Code to the provisions of the previous statutes. Section 1584 provides as follows:

"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."

A. Peonage

The purpose of the Antipeonage Act of 1867 (18 U. S. C. 1581) is to outlaw peonage, a status or condition of compulsory service based upon the indebtedness of the peon to the master. The basal fact is indebtedness.[55] The condition exists, therefore, where a person is compelled by force or threat of force to work for another in payment of a debt. The amount of the debt and the means used to coerce the victim are immaterial.[56] In addition to prohibiting peonage, section 1581 prohibits the return of a person to a condition of peonage; the arrest of a person with the intent of placing him in a condition of peonage; and the arrest (not necessarily under color of law) of a person with the intent of returning him to a condition of peonage.[57]

Perhaps the most common type of complaint received in the Civil Rights Section in the field of forced labor involves the arrest of an employee who has just left or is about to leave the employment. The arrest is usually predicated upon a minor larceny or other minor offense, and its evident purpose is either to punish the employee or to place him in fear of prosecution so that he will return against his will to the employment. If the arrest is followed by efforts to return the employee to the place of business or the farm, it may be found that the arrest was made with the intent of placing the employee in a condition of peonage.

B. Involuntary servitude and slavery

There are many situations which cannot be reached by the Antipeonage Act, but which are prohibited by the 13th amendment and constitute violations of the statutes dealing with involuntary servitude and slavery (18 U. S. C. 1583 and 1584). The fundamental difference between the peonage and the involuntary servitude and slavery statutes lies in the element of debt, which is not a part of the offense under the latter statutes. As stated above, it was not until the revision of the Criminal Code in 1948, that a holding, as such, would constitute a criminal offense. Apparently for this reason, and because of other inadequacies of the involuntary servitude and slavery provisions, a body of case law has been built up under section 1581 while the other statutes have been relatively neglected.

Perhaps the most important case, and the only reported case, decided under the involuntary servitude or slavery statutes is *United States* v. *Ingalls*,[58] involving provisions of what was then title 18 United States Code section 443 now title 18 United States Code section 1583. Defendant Ingalls was convicted under an indictment charging that on or about October 11, 1946, she and another "did entice, persuade, and induce another person; namely, Dora I. Jones, to go from Berkeley, Alameda County, to Coronado, San Diego County, Calif. * * * with the intent that Dora I. Jones, be held as a slave." In the defendant's motion for a new trial, the district court's definition of the term "slave" was challenged. The court reviewed the evidence and showed that for about 25 years the defendant had kept the victim in her household as a servant. During this period the victim was required to arrive early in the morning and perform practically all the household labor in the defendant's home. She was forbidden to leave except to perform errands and required to work long hours without compensation. Poorly fed, she was denied the right to have friends, and was physically abused on several occasions. When she expressed a desire to leave, the defendant reminded her of an adulterous relationship which the victim had in the past with the defendant's first husband and of an abortion to which she, the victim, had submitted. This threat of exposure and prosecution held over the victim kept her in slavery, although the misconduct had occurred 38 years previously.

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[55] *Clyatt* v. *United States*, 197 U. S. 207, 215 (1908).
[56] *Pierce* v. *United States*, 146 F. 2d 84, cert. den., 324 U. S. 873 (1945).
[57] *United States* v. *Gaskin*, 320 U. S. 527 (1944).
[58] *United States* v. *Ingalls*, 73 F. Supp. 76 (S. D. Calif., 1947).

The victim had come into the service of the defendant at the age of 17 and had been in fear of the defendant throughout the years. When she did try to leave the defendant, it was only at the inducement of the defendant's daughter who had her leave the family automobile in which she was required to sleep during a cross-country trip, and complain to a member of the Berkeley, Calif., Police Department, in whose presence the defendant renewed to the victim the threat of exposure and because of these threats, she returned to her employment with the defendant. The district court concluded that she was "one who had no freedom of action and whose person and services were wholly under the control of defendant and who was in a state of enforced compulsory service to the defendant" and, therefore, was a slave within the meaning of the statute.

It should be noted that prosecution could not have been undertaken in this case under any theory, had it not been for the fortuitous circumstances that the victim left the condition of slavery for a very short period of time in 1946. At the time of the holding of the victim, a holding in involuntary servitude as such was not an offense, and it was necessary for the prosecutor to find a break in the continuing condition of employment to permit the use of the provision which makes it an offense to entice, persuade, or induce another to go any place with the intent that he be made or held as a slave. Her visit to the police station and the subsequent threats of the defendant which caused the victim to return, made the statute apply. Today, of course, Ingalls could be prosecuted under section 1584 for the holding as such. The peonage statute would not have been appropriate, since there appears to have been no debt involved in the case.

Aside from the general conspiracy statute (18 U. S. C. 371), section 241 of title 18, United States Code, may be used in the enforcement of the forced labor statutes. Section 241 protects citizens "in the free exercise or enjoyment of any right or privilege secured" by the Constitution. Since the 13th amendment guarantees to all persons the right to be free from slavery or involuntary servitude, it was held in *Smith* v. *United States*,[59] that these rights are secured to every person within the jurisdiction of the United States and a conspiracy to deprive any citizen of the free exercise or enjoyment of such rights is indictable under the statute.

ELECTION STATUTES

Among the duties of the Civil Rights Section is the troublesome task of enforcing the Federal laws having to do with elections and election campaigns.

The Federal election laws, unfortunately, do not fall into any logical pattern. They outlaw activity ranging from the stationing of troops at polls to the mailing of anonymous campaign literature and yet do not control the actual mechanics of conducting elections. A brief history of Federal legislation in this field with reference to some of the more important problems which we face in enforcing the laws may be of interest.

The Constitution provides in article I, section 2, for the popular election of Representatives and, since the passage of the 17th amendment, for the popular election of Senators. The qualifications for voting in these elections, it is provided, shall be the same as the qualifications for voting for the most numerous branch of the legislature of the State in which the voter resides. Article 1, section 4, provides that the States shall determine the time, place, and manner of conducting these elections, but that the Federal Government may at any time make or alter such regulations. It is upon these constitutional provisions that all election legislation, except that pertaining to Government employees, must rely.

Until 1870, with insignificant exceptions,[60] Congress did not utilize its constitutional right to legislate in the election field. After the Civil War, however, the reconstruction Congress, motivated in part by a desire to protect the Negroes in the South from disenfranchisement, passed the Enforcement Act[61] which provided for complete supervision by the Federal Government of all elections in which Federal candidates were to be elected. The act outlawed every type of fraudulent and corrupt practice and provided for the stationing of Federal supervisors and Federal marshals at the polls on election day.

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[59] *Smith* v. *United States*, 157 F. 721 C. A. 8, 1907, cert. den. 208 U. S. 618 (1908).

[60] Such as an act of 1867 prohibiting Government officials from exacting political contributions from workers in Navy yards (14 Stat. L. 492) and the act of 1842 providing for the election of Congressmen by districts rather than by statewide elections (5 Stat. 491).

[61] Act of May 31, 1870 (16 Stat. L. 140) entitled, an act "to enforce the legal right of citizens of the United States to vote in the several States of this Union." Amended by act of February 28, 1871 (16 Stat. L. 433). Together, these statutes are referred to as the Enforcement Act.

Although the Enforcement Act had been held by the Supreme Court to be a valid exercise of Federal authority under section 4 of article 1, of the Constitution,[62] the advocates of States rights argued that the court had erred and that the conduct of elections was not an appropriate field for Federal legislation. Their efforts resulted, in 1894, in the repeal of practically all of the Enforcement Act.[63] The repealers overlooked, however, two rather innocuous appearing sections of the act [64] which have survived as sections 241 and 242 of title 18, United States Code.

The Enforcement Act had been repealed for only a few short years when the need for an entirely different type of Federal regulation of elections became apparent. Although the States were competent to cope with the mechanical problems operating the polls on election day they were powerless to regulate the election campaign activities of powerful national interests whose expenditure of vast sums to influence the outcome of national elections was causing concern to many.

In the bitterly contested 1896 election it was estimated that $16 million, an astronomical sum in those days, had been spent to propagandize the electorate. The public was shocked when the young Charles Evans Hughes, investigating for the Armstrong committee in New York, disclosed huge contributions by insurance companies to influence the 1904 elections.

As a result of these disclosures, Congress passed a bill in 1907 prohibiting corporations from making contributions in connection with political elections.[65] As amended to pertain to labor unions as well as corporations,[66] this statute now appears as section 610, title 18, United States Code.

In addition to barring the use of corporate funds, Congress, in 1911, imposed a limitation on the amount any candidate for a Federal elective office could spend in an election campaign. At the same time, Congress sought, by the passage of a bill requiring the filing of financial reports by Federal candidates, to subject campaign financing to the spotlight of publicity. As amended by the Corrupt Practices Act of 1925, the provisions limiting campaign expenditures and the provisions requiring financial statements appear now as sections 241 to 248, of title 2.

United States Senator Newberry, of Michigan, in his campaign for reelection in 1918, together with his friends, spent more than $100,000 for his nomination and election. The prosecution which resulted succeeded only in casting serious doubt on the constitutionality of the statute which limited political contributions insofar as it applied to primary elections. The Supreme Court divided 4 ways on the question of the power of the Federal Government under section 4 of article 1 of the Constitution to regulate primary elections,[67] and in the light of this confusion, the Congress followed the simple expedient of amending the law so as to make it inapplicable to primaries and political conventions. The new bill, known as the Corrupt Practices Act of 1925, also codified the meager Federal law relating to elections and added a section prohibiting the soliciting of funds by 1 Federal office holder from another.[68]

As amended to apply only to general elections, the Federal laws limiting campaign expenditures, prohibiting corporate contributions, and requiring the filing of financial statements lost much of their effectiveness. In the Southern States, where the primary election is all important, they became a virtual nullity.

Although the Supreme Court has indicated in the case of *United States* v. *Classic*,[69] decided in 1941, that the Federal Government does have the power to regulate Federal primaries under certain circumstances, Congress [70] has taken little action to plug the loopholes in the Corrupt Practices Act, which the Congress created following the Newberry decision. A notable exception, however, is the Taft-Hartley [71] amendment to the Corrupt Practices Act, which, in addition to barring campaign contributions by labor unions, extended the prohibition against corporate and union contributions to cover primary elections.

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[62] *Ex Parte Siebold*, 100 U. S. 371, 1879.
[63] 28 Stat. 36.
[64] Secs. 6 and 17, originally sections of the Civil Rights Act of 1866.
[65] 34 Stat. 814.
[66] Made temporarily applicable to labor unions by the War Labor Disputes Act, s c. 9. Amended by the Labor Management Relations Act of 1947, sec. 303.
[67] *Newberry* v. *United States*, 256 U. S. 232.
[68] Sec. 312, Corrupt Practices Act, now sec. 602, title 18.
[69] 313 U. S. 299.
[70] Discussed above under sec. 241 of title 18, U. S. Code.
[71] Labor Management Relations Act of 1947, supra.

Although individual Members of Congress submitted bills calculated to strengthen the existing elections laws,[72] it was not until 1939 with the passage of the Hatch Act that any significant progress was made. The Hatch Act is aimed primarily at preventing the political exploitation of Federal officeholders and the misuse of official position for political purposes.

In sections 13 and 21, however, the act also attempts to regulate the use of money in campaigns. Section 13 attempts to limit to $5,000 the amount any individual may contribute to a candidate or political committee for his nomination and election but in fact only limits the channels through which contributions can be made. Section 21, which does not apply to primaries or conventions, limits to $3 million the amount which may be accepted or spent by political committees. Unfortunately, the two sections are so loosely drawn and so full of inconsistencies that it has proved extremely difficult to establish a violation of their provisions.

In spite of the many shortcomings of the Federal election statutes, it is possible to formulate certain rules by which anyone may chart a reasonably safe course for his political activities. However, one may have to resort to frequent reference to the calendar since some of the rules apply to both nominating and election activities and others do not begin to run until after the date of the primaries or the nominating conventions. Certain prohibitions apply to all persons, including candidates and political committees, as follows:

"1. No one may solicit or receive contributions from persons receiving Federal relief money or from administrative personnel of relief agencies (sec. 604, title title 18 U. S. C.),[73] or from Federal officeholders in a Federal building (18 U. S. C. 603). The latter prohibition applies to the mailing of a letter, soliciting contributions, to a Government office. Incumbents in office may not solicit Federal officeholders at all (sec. 602, title 18 U. S. C.).

"2. No one may bribe or receive a bribe for voting or refraining from voting for a candidate for House or Senate in a general election (sec. 597, title 18 U. S. C.).[74]

"3. No one may intimidate, threaten, or coerce anyone in order to affect his vote in either a primary or a general election (sec. 594, title 18 U. S. C.).[75]

"4. No one may bribe a voter by the promise of appointment to any job "provided for or made possible by any act of Congress" (sec. 600, title 18 U. S. C.), nor may he attempt to affect a vote by the threat of deprivation of employment provided for by Federal relief funds (sec. 598, title 18 U. S. C.).[76]

"5. No one may furnish lists for political purposes of persons receiving Federal relief moneys or of the administrative personnel of Federal relief agencies (sec. 605, title 18 U. S. C.).[77]

"6. No one may solicit contributions from any person or firm entering into any contract with the United States or its agencies for the rendition of personal services or the furnishing of supplies (sec. 611, title 18 U. S. C.).[78]

"7. No one may contribute more than $5,000 to a candidate or to a national committee or a branch thereof in connection either with a primary or a general election campaign but anyone may give as much as he likes to a State or local committee (sec. 608, title 18 U. S. C.).[79]

"8. No one may purchase articles of any kind or description, the proceeds of which are to inure directly or indirectly to the benefit of any candidate in the primaries or general election for the office of Senator, Congressman, President, or Vice President, or of any national political committee (sec. 608, title 18 U. S. C.).[80]

"9. Anyone who in 2 or more States directly expends more than $50 for a candidate for the House or Senate in a general election campaign must file an itemized statement of his expenditures with the Clerk of the House. He need not report such expenditures made on behalf of a presidential candidate nor need he report contributions as to a political committee (sec. 245, title 2 U. S. C.).[81]

"10. No one may accept a contribution in connection with a general or primary election for presidential and vice presidential electors or Senators or

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[72] In 1937 and 1939 Senator Nye introduced bills which would have extended to the whole election process and limited the expenditure of money in all Federal election campaigns. See S. 176, 76th Cong., 1st sess.

[73] Hatch Act, sec. 5.

[74] Corrupt Practices Act, sec. 311.

[75] Hatch Act, sec. 1.

[76] Hatch Act, secs. 4 and 5.

[77] Hatch Act, sec. 6.

[78] Hatch Act, sec. 20.

[79] Hatch Act, sec. 18.

[80] Hatch Act, sec. 13 (c). This is not to be construed to interfere with the regular business of a candidate.

[81] Corrupt Practices Act, sec. 306.

Representatives from a corporation or from a labor organization. Contributions, which include loans, may not be accepted from national banks in connection with even a general election of State officials" (sec. 610, title 18 U. S. C.).[83]

These rules appear to be clear. Nevertheless, when we consider the vast area of election activity which Federal law does not purport to control, such as the actual mechanics of conducting elections, and add to it the areas in which Federal law falls short of effective control, such as controlling the total expenditure of funds in election campaigns, we see that the Federal Government actually plays a minor role in this most important field of political activity. Unfortunately, the public and even members of the bar fail to realize our very limited jurisdiction in these matters, and we are constantly beseiged with requests to take prosecutive action in cases which at most constitute violations of State law.

LABOR STATUTES

In addition to its other statutory assignments, the Civil Rights Section supervises the work of the United States attorneys in criminal matters arising under a variety of labor statutes, designed to protect the rights and to promote the welfare of workingmen and workingwomen.

Among these statutes, and of special importance in these days of manpower shortages, inviting as it does the employment of under-aged children, is the Fair Labor Standards Act (29 U. S. C. 201 et seq.).[84] Prosecutions under this act are by no means limited to child labor cases, and the section's close attention to wage and hour cases has resulted in a constant improvement in the enforcement of the act.

Of particular importance to railroad workers are four acts. The Hours of Service Act (45 U. S. C. 61–66) is aimed to prevent excessive working hours and to eliminate the resultant danger to railroad workers and to the traveling public.[85] The Safety Appliance Act (45 U. S. C. 1–16) penalizes railroads for the movement of defective trains which over a long period of years had contributed to the high accident and mortality rate among railroad men.[86] The Signal Inspection Act (49 U. S. C. 26–28) dealing with the installation and operation of signal systems on the railroads is aimed to reduce accidents on the Nation's railroads.[87] The last of these acts is the Railway Labor Act (45 U. S. C. 152, 181) which assures to employees of both railroads and airlines the right to organize free from employer influence and control.[88]

Then there is the Kick-Back Act (18 U. S. C. 874). Originally adopted at the depth of the last depression, it has become of mounting importance as Federal financing in pursuance of defense efforts increases the number of workers on federally financed construction projects. The purpose of this act is to assure that workers actually receive the benefit of the wage schedules which Congress has provided for them instead of being intimidated and coerced into paying some part of the wages to contractors, subcontractors, and others.[89]

In addition, the section supervises criminal prosecutions under the Soldiers' and Sailors' Civil Relief Act of 1940 which (among other things) provides protection to servicemen and their families from evictions (50 U. S. C. War App. 530)[90] and from seizures of property purchased on installment or mortgage payments (50 U. S. C. War App. 531, 532) during military service.

The 8-hour law on public works (40 U. S. C. 321 et seq.) affords protection as to hours of work to mechanics and laborers employed by the Federal Government or by private contractors under federally financed contracts.[91]

The act against interstate transportation of strikebreakers (18 U. S. C. 1231) provides punishment for the transporting of persons employed or to be employed for the purpose of obstructing or interfering by force or threats with peaceful picketing in labor controversies or the exercise by employees of the right of self-organization or collective bargaining. The primary purpose of this statute is to reach activities of the Pearl Bergoff type of professional strikebreaking agencies, which specialize in furnishing thugs to "break" strikes.

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[83] Corrupt Practices Act, secs. 309 and 313.
[84] *United States* v. *Darby Lumber Co.*, 312 U. S. 100.
[85] *Atchison, etc., R. Co.* v. *United States*, 244 U. S. 336.
[86] *United States* v. *State of California*, 297 U. S. 175.
[87] *Delaware & Hudson Co.* v. *United States*, 5 F. 2d 831.
[88] *Railway Employees' Co-op. Ass'n.* v. *Atlanta B. & C. R. Co.*, 22 F. Supp. 510.
[89] *United States* v. *Laudani*, 320 U. S. 543.
[90] *Clinton Cotton Mills* v. *United States*, 164 F. 2d 173.
[91] *United States* v. *John Kelso Co.*, 86 F. 204.

APPENDIX A

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HISTORY OF THE CIVIL RIGHTS STATUTES

I

Section 241, title 18, United States Code

1. This section had its origin in section 6 of the act of May 31, 1870 (16 Stat. 140) entitled "An act to enforce the right of citizens of the United States to vote in the several States of this Union, and for other purposes."

The text of section 6 of this act was as follows:

"*And be it further enacted*, That if two or more persons shall band or conspire together, or go in disguise upon the public highway, or upon the premises of another, with intent to violate any provision of this Act, or to injure, oppress, threaten, or intimidate any citizen with intent to prevent or hinder his free exercise and enjoyment of any right or privilege granted or secured to him by the Constitution or laws of the United States, or because of his having exercised the same, such persons shall be held guilty of felony, and, on conviction thereof, shall be fined or imprisoned, or both, at the discretion of the court—the fine not to exceed five thousand dollars, and the imprisonment not to exceed ten years—and shall, moreover, be thereafter ineligible to, and disabled from holding, any office or place of honor, profit, or trust created by the Constitution or laws of the United States."

2. Section 6 was carried over into the Revised Statutes of 1873 as section 5508; it was reaffirmed and given its present wording as section 19 of the Criminal Code of 1909 (35 Stat. 1092). In 1925 it acquired the designation as section 51, title 18, United States Code. In 1948 it was again amended and carried into the revised title 18 or section 241.

3. The principal cases in which the Section has been construed are:

United States v. *Cruikshank* ((1875) 92 U. S. 542)
Ex parte Yarbrough ((1884) 110 U. S. 651)
Baldwin v. *Franks* ((1887) 120 U. S. 678)
United States v. *Waddell* ((1884) 112 U. S. 76)
Logan v. *United States* ((1892) 144 U. S. 263)
United States v. *Mosley* ((1915) 238 U. S. 383)
United States v. *Classic* ((1941) 313 U. S. 299)
United States v. *Williams* ((1951) 341 U. S. 70)

4. The following are the principal decisions upholding the constitutionality of the section:

Ex parte Yarbrough, supra.
United States v. *Waddell, supra.*
Logan v. *United States, supra.*
Mosley v. *United States, supra.*
Motes v. *United States* ((1900) 178 U. S. 458)

II

Section 242, title 18, United States Code

1. This section had its origin in section 2 of the act of April 9, 1866 (14 Stat. 27) entitled: "An act to protect all persons in the United States in their civil rights, and furnish the means of their vindication."

The text of section 2 of this act was as follows:

"*And be it further enacted*, That any person who, under color of any law, statute, ordinance, regulation, or custom, shall subject, or cause to be subjected, any inhabitant of any State or Territory to the deprivation of any right secured or protected by this act, or to different punishment, pains, or penalties on account of such person having at any time been held in a condition of slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, or by reason of his color or race, than is prescribed for the punishment of white persons, shall be deemed guilty of a misdemeanor, and, on conviction, shall be punished by fine not exceeding one thousand dollars, or imprisonment not exceeding one year, or both, in the discretion of the court."

2. Section 2 was reenacted by section 18 of the act of May 31, 1870 (16 Stat. 144). It was amended and carried into the Revised Statutes of 1873 as section 5510. It was further amended by section 20 of the Criminal Code of 1909 (act of March 4, 1909, 35 Stat. 1092). In 1925 it was designated as section 52, title 18, United States Code, and was again amended in 1948 and carried into the revised title 18 as section 242.

3. The principal cases in which the section has been construed are:

United States v. *Classic* ((1941) 313 U. S. 299)
Screws v. *United States* ((1945) 325 U. S. 91)
Williams v. *United States* ((1951) 341 U. S. 97)
Catlette v. *United States* ((1943) 132 F. 2d 902)
Crews v. *United States* ((1947) 160 F. 2d 746)
Lynch v. *United States* ((1951) 189 F. 2d 476; certiorari denied, 342 U. S. 831)
United States v. *Jones* ((1953) 207 F. 2d 785)

4. The following are the principal decisions upholding the constitutionality of the section:

Screws v. *United States, supra.*
Williams v. *United States, supra.*

III

For a more detailed study of the evolution of the criminal civil-rights statutes, see Carr, Federal Protection of Civil Rights—Quest for a Sword (1947). No attempt has been made in this memorandum to discuss the statutes providing civil remedies for private persons.

SUPPLEMENTAL STATEMENT BY ASSISTANT ATTORNEY GENERAL WARREN OLNEY, III, IN RESPONSE TO QUESTIONS BY MEMBERS OF THE SENATE SUBCOMMITTEE ON PRIVILEGES AND ELECTIONS

October 10, 1956

No study of the political practices followed during the course of the 1956 presidential and senatorial elections could possibly be adequate or complete without including the mass disfranchisement in certain communities by unconstitutional means of thousands of legally registered voters. It presents a problem of major concern to the whole Nation and would appear to lie within the investigative jurisdiction of the Senate Subcommittee on Privileges and Elections.

I should like to illustrate what is going on, as well as to suggest how the subcommittee might be of public service by giving the facts on just one small parish. I will take as illustrative Ouachita Parish in the State of Louisiana.

On January 17, 1956, there were approximately 4,000 persons of the Negro race whose names appeared on the list of registered voters of Ouachita Parish as residing within wards 3 and 10 in that parish. It would appear that these persons were and are citizens of the United States, possessing all of the qualifications requisite for electors under the Constitution and the laws of Louisiana and of the United States, because a system of permanent voter registration, provided for under the laws of the State of Louisiana, was in effect in Ouachita Parish, and all of these persons had registered and qualified for permanent registration and had been allowed to vote in previous elections.

As of October 4, 1956, the names of only 694 Negro voters remained on the rolls of registered voters for wards 3 and 10 of Ouachita Parish, the names of more than 3,300 Negro voters having been eliminated from the rolls in violation of the laws of Louisiana, as well as those of the United States. This mass disfranchisement was accomplished by a scheme and device to which a number of white citizens and certain local officials were parties.

The scheme appears to have taken form as early as January of 1956, and its principal purpose was to eliminate from the list of registered voters of Ouachita Parish the names of all persons of the Negro race residing in wards 3 and 10, and thereby deprive them of their right to vote.

On March 2, 1956, a nonprofit corporation, organized under the laws of the State of Louisiana, and called the Citizens Council of Ouachita Parish, La., was incorporated. Among its ostensible objects and purposes, as stated in its articles of incorporation, are the following:

"1. To protect and preserve by all legal means, our historical southern social institutions in all their aspects;

"2. To marshal the economic resources of the good citizens of this community and surrounding area in combating any attack upon these social institutions."

Notwithstanding these stated objects, subsequent developments have demonstrated that one of the principal objects and purposes of the Ouachita Citizens Council was and is to prevent and discourage persons of the Negro race from participating in elections in the parish.

The names of the officers, directors, and members of the Ouachita Citizens Council will be made available to the subcommittee if the subcommittee wishes them.

During the month of March 1956, the officers and members of the citizens council began to carry out their plan to eliminate the names of Negro persons from the roll of registered voters. This scheme consisted of filing purported affidavits with the registrar of voters challenging the qualifications of all voters of the Negro race within wards 3 and 10, and of inducing the registrar to send notices to the Negro voters requiring them within 10 days to appear and prove their qualifications by affidavit of 3 witnesses. The scheme further consisted of inducing the registrar to refuse to accept as witnesses bona fide registered voters of the parish who resided in a precinct other than the precinct of the challenged voters, or who had themselves been challenged or who had already acted as witnesses for any other challenged voter. Of course it was a part of this scheme that none of the registered Negro voters would be able to meet these illegal requirements and upon the basis of such pretext, that the registrar would strike their names from the roll of registered voters.

These people in the Ouachita Citizens Council appear to have succeeded either by persuasion or intimidation in procuring the help and cooperation of the election officials of Ouachita Parish.

In April and May of 1956, the registrar and her deputy permitted the officers and members of the citizens council to use the facilities of the office of the registrar to examine the record and to prepare therefrom lists of registered voters of the Negro race. The citizens council was given free run of the registrar's office and was permitted to occupy the office and work therein during periods when the office of the registrar was not officially open to the public.

Between April 16, 1956, and May 22, 1956, the members and officers of the Ouachita Citizens Council filed with the registrar approximately 3,420 documents purporting to be affidavits, but which were not sworn to either before the registrar or deputy registrar of Ouachita Parish as required by law. In each purported affidavit it was alleged that the purported affiant had examined the records on file with the registrar of voters of Ouachita Parish, that the registrant named therein was believed to be illegally registered, and that the purported affidavit was made for the purpose of challenging the right of the registrant to remain on the roll of registered voters, and to vote in any elections. These purported affidavits were not prepared and filed in good faith, but were prepared and filed

without regard to the actual legal qualifications of the registrants to whom they referred.

Prior to the filing of the purported affidavits, there were in ward 10, 2,389 persons of the Negro race and 4,054 persons of the white race whose names appeared on the list of registered voters. The affidavits filed by the citizens council challenged all of the 2,389 Negro voters and challenged the qualifications of none of the 4,054 white voters registered in that ward. In ward 3 the citizens council filed purported affidavits challenging the qualifications of 1,008 out of the total of 1,523 Negro voters, but only 23 of the white voters who were registered in that ward.

The registrar, knowing that the pretended affidavits were not sworn to as required by law, and that the purported affiants had not in each case personally examined the records in the registrar's office pertaining to each challenged registrant, accepted the pretended affidavits for filing and mailed copies of them together with printed citations to the approximately 3,420 voters named therein, requiring them within 10 days to appear in the office of the registrar and to prove their qualifications. The citations and copies of the pretended affidavits were mailed to large groups of registrants at or about the same time with the knowledge that the ordinary facilities and personnel of the registrar's office would not permit the receiving of the proof of their qualifications from all of the registrants within the 10-day period. Of course it was intended that all challenged registrants of the Negro race who were thereby denied an opportunity to prove their qualifications would be eliminated from the roll of registered voters.

However, registrants of the Negro race responded to these citations in large numbers. During the months of April and May large lines of Negro registrants seeking to prove their qualifications formed before the registrar's office, starting as early as 5 a. m. But the registrar and her deputy refused to hear offers of proof of qualifications on behalf of any more than 50 challenged Negro registrants per day. Consequently most of the Negro registrants were turned away from the registrar's office and were denied any opportunity to establish their proper registration. Thereafter the registrar and her deputy struck the names of such registrants from the rolls.

As to the Negro voters whose names have thus been stricken from the roll and who sought to reregister as voters, the registrar and her deputy, at the instigation of the citizens council and under the color of authority of the Louisiana Revised Statutes, required such applicants for registration to give a "reasonable interpretation" of a clause of the constitution of Louisiana or of the United States and no similar requirement was ordinarily imposed upon persons of the white race. Regardless of the interpretations given, the registrar and her deputy declared them to be unreasonable. In this manner Negro applicants for registration, although possessing all the legal qualifications for voters under the laws of Louisiana and of the United States, were denied their right to register and qualify as voters.

For this serious condition there is no adequate remedy presently available to the Department of Justice. A criminal prosecution begun after the election would not restore to the roll of registered voters of Ouachita Parish the names that have been unlawfully removed. It would not protect the integrity of the election of officers of the United States in the November election.

The Department of Justice has not been blind to the possibility that this kind of unconstitutional disfranchisement of citizens of the United States might occur and that more effective legal remedies are needed. The Attorney General, in April 1956, presented proposals to both Houses of Congress for legislation which would authorize him to apply to the Federal courts for preventive relief by way of injunction in cases such as this. In testifying in support of these proposals the Attorney General pointed out to the Congress that although under present statutes the Department can prosecute after such deprivations of the right to vote have occurred, the Department could not seek preventive relief when violations are threatened. The Attorney General then illustrated his point as follows:

"In 1952, several Negro citizens of a certain county in Mississippi submitted affidavits to the Department alleging that because of their race the registrar of voters refused to register them. Although the Mississippi statutes at that time required only that an applicant be able to read and write the Constitution, these affidavits alleged that the registrar demanded that the Negro citizens answer such questions as 'What is due process of law?' 'How many bubbles in a bar of soap?,' etc. Those submitting affidavits included college graduates, teachers, and businessmen, yet none of them, according to the registrar, could meet the

voting requirements. If the Attorney General had the power to invoke the injunctive process, the registrar could have been ordered to stop these discriminatory practices and qualify these citizens according to Mississippi law."

The events which I have recited in Ouachita Parish, La., demonstrate how justified the Attorney General was in his plea to the Congress for legislation permitting him to seek preventive relief in such cases from the courts.

The disfranchisement of American citizens is by no means confined to Ouachita Parish or to the State of Louisiana. The Department is in receipt of a complaint under date of September 21, 1956, that a similar scheme using the same technique, is in operation in Rapides Parish, La., under the guidance of a White Citizens Council. It is alleged that within a 10-day period the council had wrongfully caused the elimination from the rolls of over 200 properly qualified and registered Negro voters.

On September 22, 1956, a similar complaint was received from Pierce County, Ga., it being alleged that in August the qualifications of approximately 25 to 30 percent of the Negro voters of Pierce County were challenged while no challenges to any of the white voters were made. Thereafter most of the challenged voters' names were stricken from the list so that they cannot now vote, although properly qualified. The full facts of this complaint have not yet been ascertained.

These developments should demonstrate to everyone who believes in the basic principles of the United States Constitution that it is indeed regrettable that the legislative proposals of the Attorney General seeking civil remedies to protect the constitutional right to vote should have been bottled up in the Senate Judiciary Committee after having passed the House. The failure of the Congress to act in this particular has left the Department of Justice and the courts without the remedies and means necessary to secure the honesty and integrity of elections for Federal officers.

Under these circumstances, I respectfully suggest that a special responsibility rests upon the Senate Subcommittee on Privileges and Elections. This subcommittee is that agency of the Congress most directly concerned with elections. It is now engaged in the study of political practices during the presently pending elections. If this subcommittee would hold public hearings concerning this unconstitutional disfranchisement of citizens of the United States, it would indeed be, to quote the chairman's letter of invitation, "in the interest of public enlightenment." It would also be of aid in the consideration of legislation in the next session of Congress. If such hearings were held in one or more of the places from which these complaints emanate, these abuses might well be stopped. I venture to predict that public hearings in these places prior to election would result in the names of hundreds of qualified voters being immediately restored to the registration rolls. Such a decision on the part of the subcommittee would be most helpful in contributing to a free and fair election.

[For release February 25, 1957]

DEPARTMENT OF JUSTICE

The Department of Justice today made public the attached letters:

FEBRUARY 21, 1957.

HON. EMANUEL CELLER,
Chairman, Subcommittee No. 5 of the Committee on the Judiciary,
House of Representatives, Washington, D. C.

DEAR MR. CELLER: On February 13 Mr. Jack P. F. Gremillion testified before your subcommittee. A part of his testimony related to a voter registration civil-rights case arising in Ouachita Parish, La., and to the action of a Federal grand jury convened in Monroe, La., to inquire into that and other civil-rights cases. Certain facts which the Department of Justice has in its files suggest that Mr. Gremillion's testimony might have left a misleading impression in a number of respects. Accordingly, we feel obliged to provide you with information which we have which is inconsistent with the impression left by Mr. Gremillion's testimony. These facts have not previously been provided by this Department to Mr. Gremillion. We are, however, sending him a copy of this letter.

We refer herein to Mr. Gremillion's testimony by subject matter and transcript page number.

Interpretation of Constitution by registrant, page 662:

"Mr. KEATING. Do you have an educational requirement of some nature in Louisiana in order to vote?

"Mr. GREMILLION. The requirement with reference to education provides they shall be able to read and write and interpret one part of the Constitution, of their choice.

"Mr. KEATING. One part of the United States Constitution?

"Mr. GREMILLION. Yes.

"Mr. KEATING. And they can choose it?

"Mr. GREMILLION. Oh, yes. In other words, the registrar of voters cannot say, 'I want you to explain something' that is impossible to explain. They have the right of choice insofar as concerns the section or phrase of the Constitution they wish to interpret. They have their own choice on that, and nothing is foreplanned or forewarned."

Comment

In none of the 10 parishes in Louisiana which have been the subject of investigations by the Department is there any evidence that the registrar permitted the applicant for registration to chose which clause of the Constitution he wished to interpret. Specifically, in the case arising from Ouachita Parish, the investigation by the FBI disclosed that the registrar of voters in examining applicants for registration used a card on which was written an excerpt from the Constitution, which card was given to the registrar by the Citizens Council of Ouachita Parish. In one instance Mrs. Mae Lucky, registrar of voters of Ouachita Parish, asked an applicant for registration what our form of government is. The applicant replied, "A democratic form of government." The registrar said, "That's wrong—try again." The applicant said, "We have a republican form of government." The registrar then said that that answer, too, was wrong and that he applicant would have to return after the next election to reregister.

Reply affidavit on behalf of challenged voters, page 667:

"Mr. GREMILLION. * * * When such a registrant is challenged, the registrar of voters is required, under the law, to forward a notice of the challenge, a complete copy of the same, together with a form which the challenged registrant has to execute by 3 bona fide voters registered in the same parish to the effect that the challenged registrant is a bona fide resident of that parish. This form is sent to the challenged registrant at the time that the noice of challenge is sent.

"If the challenged registrant does not appear within 10 days, the registrar shall remove his name from the rolls. If, however, the challenged registrant appears with 3 bona fide registered voters to assert the authenticity of his residence in the parish before his registrar of the voters, or deputy registrar, the challenge shall fail and the voter's name shall remain on the rolls. See Louisiana Revised State [sic] of 1950, title 18, sections 132, 133, and 134."

Comment

In none of the 10 parishes which were the subject of FBI investigations did the registrar make it a practice to send a form of reply affidavit to the challenged registrant. On the contrary, investigations in Bienville, Caldwell, DeSota, Jackson, LaSalle, and Ouachita Parishes disclosed that the registrar in those parishes did everything to discourage the filing of reply affidavits in the statutory form and generally refused to accept them when offered.

In Ouachita Parish the registrar refused to accept as witnesses on behalf of a challenged voter bona fide registered voters of the parish who were not from the same precinct as the challenged voter. She also refused to accept as witnesses bona fide registered voters who had themselves been challenged. She also refused to accept as witnesses registered voters who had already witnessed to the qualifications of another challenged voter.

In Caldwell Parish the registrar refused to accept witnesses on behalf of a challenged voter unless they were accompanied by a law-enforcement officer and a member of the citizens council to identify them. He even refused to accept white persons as witnesses for Negro voters on the grounds that the witnesses were of a different race from the race of the challenged voters.

In Bienville Parish, where 560 of the 595 registered Negro voters were challenged, the registrar consistently refused to accept affidavits on behalf of registered voters which were in the statutory form and, as a result, the names of every one of the challenged Negro voters were stricken from the voting rolls.

In Jackson Parish, where 953 of the 1,122 Negro voters were challenged, the registrar also refused to accept for filing affidavits on behalf of challenged voters, which affidavits were in statutory form. As a result, all of the challenged Negro voters, with the exception of two who were physically disabled and therefore unable to fill out voter applications cards, were stricken from the voting rolls.

In a number of parishes when challenged Negro registrants came to the registrar's office in response to the challenging citation, they were told by the registrar that they would have to see a private attorney in order to get the matter straightened out.

Ouachita incident was "exceptional," pages 670–671, 702–703

"The CHAIRMAN. Mr. Attorney General, I am reading from page 145 of the transcript of these hearings, where there was testimony given as follows:

"'In Louisiana the white citizens councils have conducted a campaign to purge as many colored voters from the books as possible. In Monroe, La., representatives of the councils have actually invaded the office of the registrar of voting for the purpose of purging colored voters. The Assistant Attorney General in charge of the Criminal Division of the Department of Justice testified in October 1956 that over 3,000 voters had been illegally removed from the rolls of Ouachita Parish, in which Monroe is located.'

"Would you care to comment on that, sir?

"Mr. GREMILLION. Yes.

"I actually do not know anything officially, or unofficially, about the activities of the citizens council in my State. I am not a member, and I actually do not know. But I do know that up at Monroe they did have some difficulty with respect to voting. But that is definitely not a general rule throughout the State, and I think that is more or less an exception."

* * * * * * *

"Please do not attach too much significance to this Monroe affair in Ouachita Parish about which you already received testimony. An occurrence like that is typical in any State where political battles are involved. I personally know that that was a fight between two candidates in the mayor's race, and one candidate had the Negro votes and the other used this means of getting them off until that election was held. I regret that that had to happen. But do not judge the State of Louisiana by it. It could happen in any other State in the Union where you have politics. See what I mean?

"The CHAIRMAN. Yes, sir.

"Mr. GREMILLION. So do not pay any attention to that Monroe affair. That is strictly politics, and that is why the people are back there today."

Comment

With respect only to cases which have been investigated by the FBI, the following numbers of Negro voters were challenged in each of the following parishes:

Bienville	560	LaSalle	345
Caldwell	330	Lincoln	325
DeSoto	383	Ouachita	3,240
Grant	758	Rapides	1,058
Jackson	953	Union	600

Grand jury inquiry, page 677

"Mr. GREMILLION. Mr. Dalton, one of my assistants here advises me on something that we were talking about in the Ouachita matter, the Monroe matter, and I want to remind the committee of this: that there were two grand juries that investigated these alleged discrepancies or purging of the rolls.

"The first returned an indictment, then the second one was convened, with Mr. St. John Barrett—I believe his name was—assisting, an assistant sent down from Washington. So that grand jury also failed to send down any indictments.

"So let me remind you this matter was investigated by two Federal grand juries."

Comment

There has been only one Federal grand jury empaneled in Louisiana which has inquired into civil-rights violations. This was empaneled on December 4, 1956, and has not yet been discharged. It was in session with respect to civil-rights matters on December 4, 5, 6 and 7, January 29, 30 and 31, and February 1, 6 and 12. Witnesses were subpenaed and other evidence presented to the grand jury in

connection with the cases arising in Caldwell, DeSoto and Grant Parishes. No indictments were returned in these cases. On February 12, 1957, an attorney from this Department outlined to the grand jury the evidence which the Department had relating to cases arising in Bienville, Jackson and Ouachita Parishes, which evidence the Department believed indicated the commission of offenses against the laws of the United States and which merited presentation to a grand jury. After deliberating in private the grand jury announced through its foreman that it had determined that there was no possibility of indictments being returned in the Bienville, Jackson and Ouachita Parish cases even though the evidence was presented to them and a full inquiry conducted. The grand jury went on record as not desiring to hear any testimony in connection with these latter cases.

Reregistration of "purged" voters, Monroe, Ouachita Parish, page 672:

"Mr. KEATING. Have those names been put back on the rolls?

"Mr. GREMILLION. About 99 percent of them are back on the rolls, Mr. Keating. That was under the provisions of the law which I read to you from page 2 of my statement."

Comment

Prior to the filing of the challenges in Ouachita Parish there were approximately 4,000 registered Negro voters in the parish. On October 6, 1956, after the "purge" was over and when the registration books closed for the November 6 general election there were 694 registered Negro voters. Thus, there were in excess of 3,000 Negro voters deprived of the right to vote in the general election of November 6.

Sincerely,

WARREN OLNEY III,
Assistant Attorney General.

FEBRUARY 21, 1957.

Hon. JACK P. F. GREMILLION,
Attorney General of the State of Louisiana,
Baton Rouge, La.

DEAR MR. GREMILLION: Enclosed is a copy of a letter which I have today sent to the subcommittee of the House Committee on the Judiciary before which you testified on February 13 of this year.

As noted in that letter, we feel that some of the impressions left by your testimony were inconsistent with facts that we had in our files as a result of investigations by the Federal Bureau of Investigation into these same cases. We believe that you, as well as the subcommittee ,should have the benefit of these facts.

Sincerely,

WARREN OLNEY III,
Assistant Attorney General.

DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, March 6, 1957.

Hon. THOMAS C. HENNINGS, Jr.
Chairman, Senate Judiciary Subcommittee on Constitutional Rights,
United States Senate, Washington, D. C.

DEAR SENATOR HENNINGS: In response to requests made of the Attorney General during his testimony before the subcommittee on February 14, 15, and 16, 1957, I am submitting the following documents which are attached hereto:

(1) Statutory Specification of Duties of Assistant Attorneys General;

(2) Provision of Fair Labor Standards Act Permitting United States To Sue on Behalf of a Private Citizen

(3) Specific Civil Rights Protected by the Constitution and Laws of the United States; and

(4) Comparison of Proposed Legislation Giving the Federal Government Power To Invoke Civil Remedies in Civil Rights Cases With Other Areas Where the Government Has Power To Seek Civil Relief.

Sincerely,

WILLIAM P. ROGERS,
Deputy Attorney General.

STATUTORY SPECIFICATION OF DUTIES OF ASSISTANT ATTORNEYS GENERAL

With one exception, which is hereinafter discussed, the Congress has never specified the duties of any Assistant Attorney General by class or subject matter, but has simply provided that the duties of such officers shall be to assist the Attorney General, or the Attorney General and the Solicitor General, in the performance of their duties.

The act of June 22, 1870 (16 Stat. 162), creating the Department of Justice, provided that there should be two officers called the assistants of the Attorney General whose duty it should be "to assist the Attorney General and the Solicitor General in the performance of their duties, as now required by law." These "assistants of the Attorney General" were, in effect, Assistant Attorneys General

Section 348 of the Revised Statutes provided for three Assistant Attorneys General who should "assist the Attorney General and the Solicitor General in the performance of their duties."

The act of July 11, 1890 (26 Stat. 265), carried an appropriation for the salaries of three Assistant Attorneys General and an "additional Assistant Attorney General" to be appointed by the President, by and with the advice and consent of the Senate, but contained no specification as to the duties of the additional officer.

The act of March 3, 1903 (32 Stat. 1062), made an appropriation for the salary of, and authorized the President to appoint, an Assistant Attorney General and provided that he should perform such duties as might be required of him by the Attorney General.

The act of July 16, 1914 (38 Stat. 497), appropriated funds for the salaries of six Assistant Attorneys General but made no reference to their duties. A similar provision for six Assistant Attorneys General is contained in the act of March 4, 1915 (38 Stat. 1038).

The act of June 16, 1933 (48 Stat. 307), created the position of Assistant Solicitor General, and provided that the Assistant Solicitor General should be allocated to the same classification grade and be paid the same rate of compensation as applicable to Assistant Attorneys General. The section also provided that the Assistant Solicitor General should assist the Solicitor General in the performance of his duties and perform such additional duties as might be required of him by the Attorney General. The said section further provided: "One of the existing positions of Assistant Attorney General is hereby abolished."

The act of March 2, 1943 (57 Stat. 4), provided, in effect, for the appointment by the President of an additional Assistant Attorney General. This was accomplished by amending section 348 of the Revised Statutes, as amended (5 U. S. C. 295), to read as follows:

"There shall be in the Department of Justice six officers, learned in the law, called the Assistant Attorneys General, who shall be appointed by and with the advice and consent of the Senate, and shall assist the Attorney General and Solicitor General in the performance of their duties."

Section 4 of Reorganization Plan No. 2 of 1950 (64 Stat. 1261) created an additional Assistant Attorney General in the following language:

"There shall be in the Department of Justice one additional Assistant Attorney General, who shall be appointed by the President, by and with the advice and consent of the Senate, who shall assist the Attorney General in the performance of his duties, and who shall receive compensation at the rate prescribed by law for other Assistant Attorneys General."

The exception above referred to is found in section 28 of the act of August 5, 1909 (36 Stat. 28, 108) (amending the Revenue Act of June 10, 1890, 26 Stat. 131), which provided for the apopintment of an Assistant Attorney General who (together with certain other officers) should "have charge of the interests of the Government in all matters of reappraisement and classification of imported goods and of all litigation incident thereto, and shall represent the Government in all the courts and before all tribunals wherein the interests of the Government require such representation." The act also provided that the Assistant Attorney General should exercise the functions of his office under the supervision and control of the Attorney General. This position of Assistant Attorney General was specifically abolished by section 2 of Reorganization Plan No. 4 of 1953 (67 Stat. 636). The same section created an additional position of Assistant Attorney General and provided that the additional Assistant Attorney General should "assist the Attorney General in the performance of his duties."

Thus, at the present time there is no statutory provision requiring any Assistant Attorney General to perform duties of a particular kind of subject

matter, or to be in charge of any particular division or office in the Department of Justice.[1] As above noted, the statutes now in effect specify broadly that the duties of Assistant Attorneys General shall be to assist the Attorney General or both the Attorney General and the Solicitor General in the performance of their duties.

It may be noted that Reoragnization Plan No. 2 of 1950 (64 Stat. 1261) transfers to the Attorney General (with certain minor exceptions) all functions of all the officers in the Department of Justice and all agencies and employees of the Department. It also provides, in effect, that the Attorney General may delegate any of his functions, including those transferred to him by that plan, to any officer, agency, or employee of the Department of Justice. Hence, at the present time the Attorney General has the authority to assign or delegate to any Assistant Attorney General such functions and duties of the Department as he may deem desirable.

PROVISION OF FAIR LABOR STANDARDS ACT PERMITTING UNITED STATES TO SUE ON BEHALF OF A PRIVATE CITIZEN

On February 14, 1957, Senator Ervin requested the Attorney General to furnish the subcommittee with the provision in the Fair Labor Standards Act for the United States to bring suit for a private individual to recover his damages.

The statutory provision referred to is title 29, United States Code, section 126.

SPECIFIC CIVIL RIGHTS PROTECTED BY THE CONSTITUTION AND LAWS OF THE UNITED STATES

The following civil rights have been defined by court decisions wherein the rights were found to have been violated or wherein a pleading was found to sufficiently state a violation. This list is merely illustrative and does not attempt to include all civil rights, nor to include all court decisions growing out of violations of the rights here listed. The categorization of the rights is to some degree arbitrary.

Right to vote in Federal elections:

Swafford v. *Templeton* ((1902) 185 U. S. 487)
Smith v. *Allwright* ((1944), 321 U. S. 649)
Ex Parte Yarbrough ((1884), 110 U. S. 651)

Right of a vote in a Federal election to have his ballot fairly counted:

United States v. *Mosely* ((1915), 238 U. S. 383)
United States v. *Classic* ((1941), 313 U. S. 299)
United States v. *Saylor* ((1944), 322 U. S. 385)

Right to vote in all elections free from discrimination by State on account of race or color:

Lane v. *Wilson* ((1939), 307 U. S. 268)
Davis v. *Schnell* ((S. D. Ala., 1949), 81 F. Supp. 872, affirmed 336 U. S. 933)
Bryce v. *Byrd* ((C. A. 5, 1953), 201 F. 2d 664)
Mitchell v. *Wright* ((C. A. 5, 1946), 154 F. 2d 924)
Hall v. *Nagel* ((C. A. 5, 1946), 154 F. 2d 931)
Nixon v. *Herndon* ((1927), 273 U. S. 536)
Baskin v. *Brown* ((C. A. 4, 1949), 174 F. 2d 391)
Rice v. *Elmore* ((C. A. 4, 1947), 165 F. 2d 387)

Right to inform a Federal officer of a violation of Federal law:

In re Quarles ((1895), 158 U. S. 532)
Motes v. *United States* ((1900), 178 U. S. 458)
Nicholson v. *United States* ((C. A. 8, 1935), 79 F. 2d 387)
Hawkins v. *State* ((C. A. 5, 1923), 293 Fed. 586)

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[1] This statement applies to all Assistant Attorneys General appointed by the President with the consent of the Senate. Clearly distinguishable is the "Administrative Assistant Attorney General" created by sec. 5 of Reorganization Plan No. 2 of 1950 (64 Stat. 1261), who is a member of the classified civil service appointed by the Attorney General with the approval of the President. Even with respect to this position the reorganization plan states that the Administrative Assistant Attorney General "shall perform such duties as the Attorney General shall prescribe."

Right to testify in Federal court:

Foss v. *United States* ((C. A. 9, 1920), 266 Fed. 881)

Right to be free from mob violence while in Federal custody:

Logan v. *United States* ((1891), 144 U. S. 263)

Right to be secure from unlawful searches and seizures:

Irvine v. *California* ((1953), 347 U. S. 128, 137)

Right to peaceably assemble free from unreasonable restraint by State or local officials:

Hague v. *CIO* ((1939), 307 U. S. 496)
De Jong v. *Oregon* ((1937), 299 U. S. 353)

Freedom of religion:

Cantwell v. *Connecticut* ((1940), 310 U. S. 296)
Board of Education v. *Barnette* ((1943), 319 U. S. 624)
Murdock v. *Pennsylvania* ((1943), 319 U. S. 105)

Freedom of speech and of the press:

Lovell v. *Griffin* ((1938), 303 U. S. 444)
Myerson v. *Samuel* ((D. C., E. D., Pa., 1947), 74 F. Supp. 315)
Grosjean v. *American Press Co.* ((1936), 297 U. S. 233)

Right not to be purposefully discriminated against in public employment on account of race or color:

Kerr v. *Enoch Pratt Free Library of Baltimore City* ((C. A. 4, 1945), 149 F. 2d 212)
Mills v. *Board of Education of Anne Arundel County* ((D. C. Md., 1939), 30 F. Supp. 245)
Davis v. *Cook*, ((D. C. Ga., 1948), 80 F. Supp. 443).
Thompson v. *Gibbes* ((D. C. S. C., 1945), 60 F. Supp. 872)
Morris v. *Williams* ((C. A. 8, 1945), 149 F. 2d 703)

Right not to be denied use or enjoyment of any governmentally operated facilities on account of race or color:

Brown v. *Board of Education* ((1954), 347 U. S. 483; (1955) 349 U. S. 294)
Dawson v. *Mayor and City Council of Baltimore* ((C. A. 4, 1955), 220 F. 2d. 386, affirmed 350 U. S. 877)
Holmes v. *City of Atlanta* ((C. A. 5, 1955), 223 F. 2d 93)
Fayson v. *Beard* ((E. D. Tex., 1955) 134 F. Supp. 379)
Williams v. *Kansas City, Mo.* ((D. C., W. D., Mo., 1952), 104 F. Supp. 848)
Easterly v. *Dempster* ((D. C. E. D. Tenn., 1953), 112 F. Supp. 214)
Jones v. *City of Hamtramck* ((D. C. E. D., Mich., 1954), 121 F. Supp. 123)
Vann v. *Toledo Metropolitan Housing Authority* ((D. C. Ohio, 1953)), 113 F. Supp. 210)
Draper v. *City of St. Louis* ((D. C. Mo. 1950), 92 F. Supp. 546)
Sweeney v. *City of Louisville* ((D. C. Ky., 1951) 102 F. Supp. 525, affirmed 202 F. 2d 275)

Right not to be segregated under compulsion of State authority on account of race or color:

Browder v. *Gayle* ((D. C., M. D. Ala., 1956), 142 F. Supp. 707, affirmed 352 U. S. 903)
Morgan v. *Virginia* ((1946), 328 U. S. 373)
Fleming v. *South Carolina Electric and Gas Co.* ((C. A. 4, 1955), 224 F. 2d 752)
Shelley v. *Kraemer* ((1948), 334 U. S. 1)
Buchanan v. *Warley* ((1917), 245 U. S. 60)
Valle v. *Stengel* ((C. A. 3, 1949), 176 F. 2d 697)

Right not to be denied due process of law or equal protection of the law in other regards:

Brown v. *United States* ((C. A. 6, 1953), 204 F. 2d 247)
Oyama v. *California* ((1948), 332 U. S. 633)
Takahashi v. *Fish and Game Commission* ((1948), 334 U. S. 410)
United States v. *Angel* ((DC E. D. Ky., 1954), 119 F. Supp. 897)
Burt v. *City of New York* ((CA 2, 1946), 156 F. 2d 791)

Cobb v. *City of Malden* ((CA 1, 1953), 202 F. 2d 701)
Picking v. *Pennsylvania R. Co.* ((CA 3, 1945), 151 F. 2d 240)

Right to be free to perform a duty imposed by the Federal constitution:

Brewer v. *Hoxie School District* ((CA 8, 1956), 238 F. 2d 91)

Right, when charged with crime, to a fair trial:

Moore v. *Dempsey* ((1923), 261 U. S. 86)

Right not to be tried by ordeal or summarily punished other than in the manner prescribed by law:

Screws v. *United States* ((1945), 325 U. S. 91)
Davis v. *Turner* ((CA 5, 1952), 197 F. 2d 847)

Right not to be forced to confess an offense:

Williams v. *United States* ((1951), 341 U. S. 97)
Refoule v. *Ellis* ((DC N. D. Ga., 1947), 74 F. Supp. 336)

Right to be free from brutality at the hands of prison officials:

United States v. *Jones* ((CA 5, 1953), 207 F. 2d 785)
United States v. *Walker* ((CA 5, 1954), 216 F. 2d 683)
United States v. *Jackson* ((CA 8, 1956), 235 F. 2d 925)
McCollum v. *Mayfield* ((DC N. D., Cal., 1955), 130 F. Supp. 112)
Gordon v. *Garrison* ((DC E. D. Ill., 1948), 77 F. Supp. 477)

Right to representation by counsel at criminal trial:

Powell v. *Alabama* ((1932), 287 U. S. 45)

Right to trial by a jury from which members of the defendant's race have not been purposely excluded:

Smith v. *Texas* ((1940), 311 U. S. 128)

Right of prisoner to protection by officer having him in custody:

Lynch v. *United States* ((CA 5, 1951), 189 F. 2d 476)

Right not to be held in peonage:

Pierce v. *United States* ((CA 5, 1944), 146 F. 2d 84)
United States v. *Gaskin* ((1944), 320 U. S. 527)

Right not to be held in slavery or involuntary servitude:

United States v. *Ingalls* ((S. D. Cal., 1947), 73 Supp. 76)

COMPARISON OF PROPOSED LEGISLATION GIVING THE FEDERAL GOVERNMENT POWER TO INVOKE CIVIL REMEDIES IN CIVIL RIGHTS CASES WITH OTHER AREAS WHERE THE GOVERNMENT HAS POWER TO SEEK CIVIL RELIEF

On February 16 at the subcommittee hearings Senator Ervin requested the Attorney General to submit in writing a list of statutory provisions granting power to the Government to seek civil remedies which are "legally similar" to the proposed amendments to title 42, United States Code, sections 1971 and 1985. He stated that he thought the proposed amendments differed from existing statutes (1) in authorizing the Federal Government to bring suit for injunctive relief to enforce a right which is essentially the right of a private individual without the consent of such individual, and (2) in providing broader powers to issue restraining orders and temporary injunctions.

(1) INJUNCTIVE RELIEF WITHOUT INDIVIDUAL CONSENT

There are a number of Federal statutes which recognize the right of a private individual to sue for individual relief and at the same time authorize the Federal Government to sue for injunctive relief without requiring consent of the individual as a prerequisite to the Government suit. The following statutes are submitted as examples:

(a) Under the antitrust laws private persons who have been injured are given a right of action for treble damages (15 U. S. C. 15) and at the same time the Attorney General may bring suit to restrain the same violations which give rise to the private suit (15 U. S. C. 4).

(b) The Longshoremen's and Harbor Workers' Compensation Act (33 U. S. C. 921 (c)) provides: "If any employer * * * fails to comply with a compensation order making an award, that has become final, any beneficiary of such award *or the deputy commissioner making the order*, may apply for the enforcement of the order to the Federal district court. * * *" [Italics added.] The section goes on to authorize the court to "enforce obedience to the order by writ of injunction or by other proper process." The following section (33 U. S. C. 921a) provides that the United States attorney shall represent the deputy commissioner in any court proceedings under section 921.

(c) The National Housing Act (12 U. S. C. 1731b) prohibits the use of housing built with the aid of mortgages insured under the act from being used for transient or hotel purposes while the insurance is outstanding. Title 12, United States Code, section 1731b (h) authorizes the Attorney General to bring civil actions to enjoin violations without reference to consent of private individuals. Title 12, United States Code, section 1731b (i) permits any person owning a hotel within a radius of 50 miles of a place where a violation occurs to bring a private suit for preventive relief.

(d) The Interstate Commerce Act provides (49 U. S. C. 16) that when the Commission has made an award of damages to a complainant as a result of a violation of the act, not only may the complainant sue for the damages (49 U. S. C. 16 (2)) but also the Department of Justice may bring suit to recover for the United States the sum of $5,000 for each offense. (49 U. S. C. 16 (8) (10).) As for failure to comply with orders other than for the payment of money, the act provides that "the Interstate Commerce Commission or any party injured thereby, or the United States, by its Attorney General, may apply to any district court of the United States of competent jurisdiction for the enforcement of such order" (49 U. S. C. 16 (12)). In another section dealing with water carriers the act provides that with respect to orders for the payment of money the Commission or the Attorney General or the party injured may apply to the district court for enforcement of the order (29 U. S. C. 916).

(e) Both the Securities Act of 1933 and the Securities Exchange Act of 1934 provide civil remedies for private persons who have been injured by violations of the acts and also, without any requirement of consent by the person injured, authorize the Securities and Exchange Commission "in its discretion" to bring actions in the district courts for preventive relief. (See 15 U. S. C. 77k, 77l, 77t, 78r, 78u.)

(2) RESTRAINING ORDERS AND TEMPORARY INJUNCTIONS

The language of the proposed amendments authorizing the Attorney General to seek injunctive relief is substantially similar to that now contained in many Federal statutes and would not give to the courts power to issue restraining orders and temporary injunctions other than in accordance with present established practice. The following statutes are submitted as examples of comparable language:

(a) The Atomic Energy Act of 1954 provides: "Whenever in the judgment of the Commission any person has engaged or about to engage in any acts or practices which constitute or will constitute a violation of any provision of this chapter, or any regulation or order issued thereunder, the Attorney General on behalf of the United States may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provisions, and upon a showing by the Commission that such person has engaged or is about to engage in any such act or practices, a permanent or temporary injunction, restraining order, or other order may be granted" (42 U. S. C. 2280).

(b) The Federal Power Act provides: "Whenever it shall appear to the Commission that any person is engaged or about to engage in any act or practices which constitute or will constitute a violation of the provisions of this chapter * * *, it may in its discretion bring an action * * * to enjoin such acts or practices * * * and upon a proper showing a permanent or temporary injunction or decree or restraining order shall be ganted without bond" (16 U. S. C. 825m).

(c) Other statutes containing language similar to that in the proposed bills with reference to restraining orders and temporary injunctions include title 15, United States Code, section 77t; title 15, United States Code, section 78u; title 15 United States Code, section 80a–41; title 15, United States Code, section 80b–9; title 15, United States Code, section 1195.

Senator HENNINGS. The Attorney General certainly may leave now.

We are in this position, and I address myself especially not only to the members of the subcommittee but we are in this position with respect to the witnesses. As Senator Ervin well observed yesterday, you can never tell how long examination will last.

I want very much to do all that I can to accommodate and do everything that the committee can to make it convenient for the witnesses to appear.

However, we have a very long list of witnesses. It is obviously impossible for us—we are at 1 o'clock now.

Many of us have other commitments later in the afternoon. Unhappily we can't devote all of our time every day from early morning to late in the evening to taking testimony. However, we shall undertake to do so next week if we don't make real progress.

But as matters now stand, we have a number of witnesses who are waiting to be called on. I want to consider their convenience as well as their inconvenience in being here, but there just isn't any way of telling. I have been in courtrooms too often to undertake to predict how long a trial is going to last.

STATEMENT OF CLARENCE MITCHELL, DIRECTOR, WASHINGTON BUREAU, NAACP

Mr. MITCHELL. Mr. Chairman, very respectfully, may I ask this? I have here three witnesses, one of whom has come from Atlanta, Ga., another who is a former resident of Mississippi and has come here from Chicago, and a third who has also come from Atlanta. They have been here 2 days at their expense. I suggested to them——

Senator HENNINGS. Mr. Mitchell, how long do you expect these witnesses to take? And there might be extended cross-examination. How much on the direct?

Mr. MITCHELL. On direct presentation I would not expect it would take more than 10 minutes each, because I suggested they keep their statement to 4 pages, Mr. Chairman.

Senator HENNINGS. If we are going to get into extensive cross-examination again and get into the question of germaneness and relevance and all those things, we will be here until midnight.

Mr. MITCHELL. Could I respectfully ask, Mr. Chairman, that at least in the afternoon we make an effort to take this into consideration?

Senator HENNINGS. How many witnesses are there, Mr. Mitchell?

Mr. MITCHELL. There are four altogether.

Senator HENNINGS. Senator Talmadge has been waiting patiently for 2 days. I don't know what his plans are for this afternoon.

Mr. MITCHELL. I made an inquiry of him, because two of his constituents are involved. He indicated that his testimony would not take more than 20 minutes.

Senator HENNINGS. That's what he said the other day. It isn't the question of the direct testimony, though, Mr. Mitchell. It is the question of all this examination. We go all over the lot.

Mr. MITCHELL. The great tragedy is that these people pay their own expenses.

Senator HENNINGS. So, while then it takes 20 minutes, the cross-examination may take 2 hours. Now we have been here since 10 o'clock this morning. It is now 1 o'clock, and I want to accommodate

people, but I think most of us on the committee and others as well as the witnesses have other commitments, too.

Mr. MITCHELL. I well understand. I might say, Mr. Chairman, I undertook to make sure these witnesses were appearing at the committee's pleasure. They appeared at the time they were told to come.

Senator HENNINGS. You see our problem. Now, how many witnesses are there?

Mr. MITCHELL. There are four. As I said, I am certain, if it would be the committee's wish, we could have them appear, we could have at least three of them appear jointly and submit their statements with the suggestion that the committee members, after looking them over, might want to examine the witnesses on the basis of those statements.

Senator HENNINGS. I feel very strongly that it is our duty to hear every witness who wants to be heard, but I do not feel it is our duty to stay all day and all night and Saturdays and Sundays in order to listen to lengthy cross examination and get into that. Now if we could reach some accommodation as to whether there is going to be any examination or how much, but that is impossible. The committee will rise and reconvene at 2 o'clock. We will do our best to get through the witnesses.

I don't think Senator Hruska—and I have had expressions from other members of the committee—want to stay until 6 or 8 o'clock Saturday night listening to all this cross-examination.

Senator HRUSKA. It won't be necessary for me to comment, Mr. Chairman, because I do have commitments later this afternoon which I intend to honor.

Senator HENNINGS. Some of us have other business in the Senate. I want to be just as fair as I know how to be, but I can't assure any witness he will be heard this afternoon, without knowing how long the examination is going to take.

Senator ERVIN. I might say also I can't know how long cross-examination might take.

Senator HENNINGS. As much, Mr. Mitchell, as I'd like to accommodate and try to adjust individually, I am willing to stay late, but other Senators have indicated to me that they have obligations. There are 7 members of this committee and only 3 of us have been here, you know, during these hearings.

Mr. MITCHELL. I might say, Mr. Chairman, our problem is this: In the hearings before the House committee, we undertook to expedite them by not having people appear. We were subjected to criticism by some of the opposition witnesses on the ground that the evidence which we were offering was hearsay.

They now have a great expense in coming here and it is also a great physical inconvenience to one of our witnesses who is in a very serious physical condition.

Senator HENNINGS. I thoroughly sympathize with all that, Mr. Mitchell. If you can tell me how long the cross-examination of the first witness is going to take——

Mr. MITCHELL. I wouldn't be able to say.

Senator HENNINGS. I might be able to give you an answer. We will do the best we can.

(Whereupon, at 1:05 p. m., a recess was taken until 2 p. m. of the same day.)

AFTERNOON SESSION

Present: Senators Hennings (presiding), Ervin, Hruska, and Watkins.

Senator HENNINGS. The committee will please come to order. Our next witness, I believe, is the distinguished Senator from the State of Georgia, Senator Herman Talmadge, the junior Senator from that State. We will be very glad to hear from you, Senator Talmadge.

Senator TALMADGE. Thank you, Senator.

Senator HENNINGS. We will be glad to have you proceed in any way you please.

STATEMENT OF HON. HERMAN TALMADGE, UNITED STATES SENATOR FROM THE STATE OF GEORGIA

Senator TALMADGE. I have a prepared manuscript, and I will use that as a guide, if it may please the committee. Mr. Chairman and distinguished members of the Subcommittee of the Judiciary on Constitutional Rights.

Senator HENNINGS. I feel, Governor, that I should apologize to you because, while we took our recess at about 1 o'clock, I was detained here by numerous witnesses, all men and women of good will who wanted to testify later in the afternoon and I was delayed in getting back to my office and had some problems over there.

Senator TALMADGE. Not at all, Mr. Chairman. Being a Senator myself, I understand, of course, how these things arise.

I appear before you today to express my views on the need for protecting the civil rights of the citizens of the United States.

Our Nation has grown great and stands today as the world's foremost bastion of individual freedom because of our jealous regard for our civil rights and our diligence in providing for the free exercise of them by all citizens.

History teaches us that people lose their civil rights because of governmental action. It was because of that fact that our Founding Fathers deemed it wise to enumerate in the Bill of Rights of our Constitution the inalienable rights of freemen and to insure their perpetuity by prohibiting governmental interference with the enjoyment of them.

Every civil right which we as citizens of the United States cherish is set forth and guaranteed in that Bill of Rights.

Freedom of religion
Freedom of speech
Freedom of press
Freedom of assembly
Freedom of petition
Freedom to keep and bear arms
Freedom from the quartering of troops in homes
Security of persons, houses, papers, and personal effects
Freedom from unreasonable searches and seizures
Protection from unfounded warrants
Freedom from trial without indictment
Freedom from double jeopardy
Freedom from self incrimination
Protection from deprivation of life, liberty, and property without due process of law
Guaranty of compensation for property taken for public use
The right to a speedy and public trial by an impartial jury

The right to be tried in the State and district of the alleged offense
The right to know the charges made against one
The right to confront one's accusers
The right to have assistance of counsel
The right to seek damages in court
The right to jury determination in civil cases exceeding $20
The full protection of common law

Senator HENNINGS. The distinguished Senator from Georgia is well known as an exceedingly able lawyer.

Senator TALMADGE. I thank the distinguished chairman.

Senator HENNINGS. Wherein does the first 10 amendments of the Constitution depart from the Magna Carta?

Senator TALMADGE. That has substantially the same protection as we got in the Magna Carta in 1215.

I will continue with these rights guaranteed by the Constitution, Mr. Chairman.

Protection against excessive bail
Protection against excessive fines
Protection against cruel and unusual punishment
And, the enjoyment of all other rights not prohibited by the Constitution

These guaranties are stated clearly and unequivocably in language which can readily be understood by any person with a fourth-grade education.

They are express prohibitions with no exceptions, no qualifications and no loopholes.

History teaches us that people have been deprived of their civil rights by government. Hitler had a vast bureaucracy for the protection of the civil rights of his people but they lost theirs.

Senator HENNINGS. Government authorized or unauthorized.

Senator TALMADGE. Government de facto, Mr. Chairman. I do not know that Hitler ever had legal government but he had a de facto government.

So did Mussolini and the constitution of Russia—and I am sure these distinguished gentlemen have read it—says more about civil rights than any document on the face of the earth, yet the Russian people have the fewest civil rights simply because the government has interfered with the civil rights of the people.

They are as finite in their provisions as are the Ten Commandments and well can be likened unto them—the commandments constituting the "Thou Shalt Nots" for men living under God and the Bill of Rights constituting the "Thou Shalt Nots" for a nation living under God

The Bill of Rights is all inclusive in its guaranties. It employs the word "person" as distinguished from the word "citizen" in setting forth the civil rights to be enjoyed by those living in this Nation.

The Bill of Rights is emphatic in assuring that there shall be no legislative infringement of the liberties it enumerates. It declares that Congress shall make no law circumscribing any of the guaranties it sets forth.

Section II of article III of the Constitution is specific in establishing the manner of recourse for any person denied any of these civil rights. It vests in the Federal judiciary the power to hear and determine "all cases in law and equity arising under this Constitution."

Therefore, gentlemen of this subcommittee, I submit to you that legislation on the subject of civil rights not only is unnecessary but

also would be duplicative of and perhaps in direct conflict with the Constitution of the United States and the Bill of Rights.

I further submit to you that any person—regardless of his race, color, creed, previous condition of servitude, or place of residence—is fully protected in the enjoyment of his civil rights and has available to him immediate remedies in the event those rights are circumscribed or violated in any degree.

To those who insist that the enactment of new laws and the establishment of new procedures are necessary to the protection of civil rights in this country, I would like to ask these questions:

First, what rights would you protect which already are not guaranteed by the Constitution and the Bill of Rights?

Are any new rights to be created; if so what rights?

Senator HENNINGS. May I ask you, Senator, when the first 10 amendments to the Constitution were adopted?

Senator TALMADGE. Immediately after the ratification of the Constitution of the United States, as I recall my history, sir.

Senator HENNINGS. Precisely.

Senator TALMADGE. And the people failed to ratify or adopt the Constitution of the United States until many of our leaders pledged that these rights would be ratified.

Senator HENNINGS. Precisely.

Senator TALMADGE. And relying upon those pledges the people ratified the Constitution. True to their word the leaders of that era submitted these amendments which were promptly ratified.

Senator HENNINGS. A man named Mason had something to do with that; didn't he?

Senator TALMADGE. Indeed. Patrick Henry also was a leader in alerting the people to the dangers of the ratification of the Constitution without an enumeration of rights.

Senator ERVIN. The first 10 amendments were proposed by Congress September 25, 1789, and adopted June 15, 1790.

Senator HENNINGS. The Chair on behalf of the committee thanks the Senator from North Carolina for that additional contribution. I think the Senator from Georgia is essentially correct on his facts.

Senator TALMADGE. Why is it necessary to essentially do what State and Federal courts are already empowered to do? Is it because the courts have failed? If so, what courts and in what way?

What procedures or recourses for redress in cases of civil rights violations would you substitute in lieu of those already established by the Constitution and the Bill of Rights?

Why do you feel that the constitutional guaranties and processes under which this Nation has achieved the greatness, prosperity, and liberty that it enjoys today are not adequate to meet the needs of present and future generations?

Senator HENNINGS. Senator, may I suggest that I am sure that your questions are rhetorical, but you are not addressing them to this committee because we are undertaking to hear all the evidence.

Senator TALMADGE. I am addressing those questions, Mr. Chairman, to anyone who thinks we need more civil rights than our Founding Fathers gave us.

Senator HENNINGS. Thank you, sir.

Senator TALMADGE. It is my view, Mr. Chairman, that the protection of the civil rights of our citizenry lies not in the enactment of a

welter of confusing, contradictory, and possibly unconstitutional laws but rather in an adherence to the constitutional guaranties, processes, and prohibitions which already are the law of the land and which, without question, are adequate to meet every requirement of those who are concerned about protecting the rights of the American people.

As a strict and undeviating constitutional fundamentalist who believes the Constitution of the United States means word for word what it says, I am greatly concerned about the effect upon our constitutional civil rights which enactment of the proposed legislation under consideration by this subcommittee would have.

Senator HENNINGS. May the chairman ask a question? After the first 10 amendments does the Senator still say that the amendments thereafter are null and void because the Constitution in its original form did not mean precisely what it said?

Senator TALMADGE. No, sir. I think the Constitution of the United States means exactly what it says word for word, no more and no less.

Senator HENNINGS. Including the amendments?

Senator TALMADGE. Yes, sir.

Senator HENNINGS. After the first 10?

Senator TALMADGE. Including all amendments.

There are, I believe, some 17 so-called civil-rights bills before this subcommittee. They represent in varying degrees the 4-point program offered by the administration.

And, in the interest of time and clarity, I should like to address myself generally to those four proposals and to point out for the consideration of this subcommittee the grave constitutional pitfalls which they present.

Fraught with greatest danger to constitutional guaranties and processes is the proposal for the creation of a Commission on Civil Rights with unlimited authority to delve into the affairs of any person, firm, group, or agency under the guise of investigating developments deemed by its six members to constitute "a denial of equal protection of the laws under the Constitution."

Armed with full and unrestricted power of subpena and citation for contempt the Commission would be an absolute power unto itself, answerable only to the consciences of its individual members.

No right of appeal is provided and our citizens would be denied that fundamental right.

On 24 hours' notice this Commission could summon anyone from any part of the United States to any place it might designate to defend himself against charges of which he was totally ignorant prior to receipt of the subpena. It could compel him to bring with him all personal and business records which the Commission might desire to inspect.

Furthermore, he would be required to comply at his own expense and failure to do so in any particular would make him subject to fine, imprisonment or both for contempt.

Under the broad, loose, and ill-defined powers it would possess, the Commission could summon a minister to explain 1 of his sermons; an editor, 1 of his editorials; a political candidate, 1 of his speeches; a Government official, 1 of his official acts; a group or organization, a petition it might be circulating.

It is hard to conceive of an instance in the pursuit of its investigations in which the Commission would not violate at least one of the very civil rights it would be created to protect.

To make my point crystal clear, I want to give this committee a hypothetical case.

We will assume these facts:

A Miss Wong, a Chinese-American of the Buddhist faith, was discharged from her job in San Francisco, as personal secretary to John Smith, president of the Smith Bubble Gum Co., because of her inability to spell correctly.

Mr. Smith replaced her with a Mr. O'Reilly, an Irish Catholic and a member of Mr. Smith's own faith.

Miss Wong filed a civil suit seeking $100,000 damages, claiming she was unable to obtain employment elsewhere as the result of Mr. Smith's refusal to give her a good recommendation. At the same time she wrote to the Commission on Civil Rights and charged that the real reason she was fired was because Mr. Smith was prejudiced against women in general and Chinese Buddhist women in particular.

Notwithstanding the fact that the case already was a matter of litigation, the Commission voted to investigate it under its authority to "investigate allegations in writing * * * that certain persons in the United States * * * are being subjected to unwarranted economic pressures by reason of their sex, color, race, religion or national origin."

At 9 a. m. on Monday the Commission issued a subpena ordering Mr. Smith to appear before a closed hearing of the Commission in Washington, D. C., at 9 a. m. on Tuesday and to bring with him all records and correspondence concerning Miss Wong's employment and dismissal.

Mr. Smith already under court order to appear in court in San Francisco with the same records at the same hour, advised the Commission he would be unable to appear at the designated time.

He in turn was advised if he did not appear he would be cited for contempt.

Mr. Smith then appealed to the judge, who being up for reelection and vitally concerned about the Chinese-American vote, said Miss Wong's attorney would not agree to a postponement and advised Mr. Smith that failure to appear at the designated time also would result in his being cited for contempt.

To resolve his dilemma, Mr. Smith's attorney negotiated a hurried out-of-court settlement which cost Mr. Smith $25,000 and a letter of recommendation.

Miss Wong agreed to withdraw her complaint to the Commission.

The Commission meeting the following day, decided against dropping the case and renewed its subpena to Mr. Smith and issued another for Miss Wong—both being ordered to appear the following day. It asked the American Committee for the Protection of Chinese-Americans to assist and advise it in the inquiry; an organization, which you might suspect, would not be impartial in its viewpoint.

After 3 weeks of hearings and 6 transcontinental round trips by Mr. Smith's subordinates to produce subsequently subpenaed records the Commission took the case under advisement.

Six months later the Commission issued its report, and while it did agree that Miss Wong really could not spell very well, it concluded

nonetheless that Chinese-American minorities must be protected against "unwarranted economic pressures." It recommended that such be accomplished through the enactment of legislation requiring every company engaged in interstate commerce to hire Chinese workers in the same percentage as the Chinese population of the city in which its home office is located.

News accounts of the report resulted in the picketing of Mr. Smith's plant and the boycotting of his products by militant minority groups.

Senator HENNINGS. What was he making?

Senator TALMADGE. Bubble gum.

All because Miss Wong could not spell very well. Mr. Smith, who estimated the entire episode cost him half a million dollars in personal expenses and lost business, sold his plant and retired an embittered and disillusioned man.

Is this an extreme case? I think not.

I know that you gentlemen who are members of this subcommittee receive the same type mail as does every other Senator every day. We receive complaints by the hundreds about disappointments in civil service jobs, yet upon investigation we find that virtually without exception they are fancied imaginations and not real. Yet this Commission would be authorized under the law to act upon any fancied imaginations that were placed in writing and, I might add, not even made under oath.

It is quite easy to see how such a commission could deprive a man of his rights of freedom of speech, security of papers and personal effects, freedom from unreasonable searches and seizures, protection from unfounded warrants, freedom from double jeopardy, freedom from self-incrimination, freedom from deprivation of property without due process of law, the right to a speedy, public trial by an impartial jury, the right to be tried in the State and district of the alleged offense, the right to know the charges made against him, the right to seek damages in court, the right to confront his accusers, the full protection of the common law and the other unspecified, but nevertheless, inalienable rights such as respect for the dignity and integrity of a freeman living in this free country.

Furthermore, and if for no other reason, I would be opposed to it on this ground, it would have as its basis the complete reversal of the fundamental tenet of American jurisprudence that every man is presumed to be innocent until proved guilty.

I do not believe such a commission could stand the test of the Constitution; that is, if such test be applied according to a strict interpretation of the Constitution rather than according to some preselected "modern authority."

However, even though it conceivably could be upheld on the basis of such extralegal authority as the United Nations Charter, I cannot bring myself to believe that the members of this subcommittee or of this Congress would vote to so jeopardize the inherent constitutional civil rights of their constituents. It represents a threat to the civil rights of every citizen of every State and Territory of this Nation.

In operation the effect of such a commission would be the exact opposite of possibly protecting civil rights. To the contrary it would through attempts to police the thoughts and actions of private citizens, serve to deny them the full and unfettered enjoyment of the rights which are their constitutional birthright.

Briefly I would like to make these points about the other three administration proposals:

(1) The creation of a special Civil Rights Division in the Department of Justice under the direction of an additional Assistant Attorney General would provide no protection of civil rights not already presently afforded by the Constitution.

Senator HENNINGS. The Senator is well aware that the so-called administration bill is a part of the Attorney General's so-called civil rights program, the so-called Eisenhower civil rights program, provides that there shall be appointed upon that one additional Assistant Attorney General—period.

Senator TALMADGE. I am well aware of that.

Senator HENNINGS. Is that not true?

Senator TALMADGE. Yes.

Senator HENNINGS. So it is utterly meaningless; isn't it?

Senator TALMADGE. I am dealing with that point right now.

It would mean a further expansion of the Federal bureaucracy and the hiring at public expense of a small army of lawyers and investigators to harass and intimidate the officials and governments of our States, counties, cities, and other political subdivisions and public institutions.

Parenthetically, I would like to point out in this regard that the Attorney General already makes such investigations without specific authority—the people in Cobb County from my home State know from actual experience—and what he apparently wants is an ex post facto law legalizing what he is already doing.

(2) The threefold proposal to strengthen civil-rights statutes is one which would be hilarious if it were not so serious in its implications.

The requested authorization of the Attorney General to seek injunctions to restrain persons who are about to engage in any acts or practices which would give rise to a cause of action is ridiculous on its face.

Senator HENNINGS. Senator, may I suggest to you that last year the Committee on Constitutional Rights—of which I happened to be a member and chairman at that time—reported out a bill to the full committee with penal clauses, not injunctive relief. We think that—at least those of us on the committee thought—any man deprived by coercion, threat, or violence or otherwise of his franchise should not be penalized. A great deal of time has been taken about the injunctive relief by the distinguished Senator from North Carolina.

Senator TALMADGE. That at least would not deprive a man of his constitutional rights because of the fact he would have to be indicted by a grand jury, confronted by his accusers, and tried by a jury of his peers in his hometown.

Senator HENNINGS. Right.

Senator TALMADGE. Now dealing with this injunctive power, it is ridiculous on its face; that is, unless it also is to be accompanied with an authorization to hire mindreaders to advise the Attorney General when and where such acts are being contemplated.

Such flies in the face of all basic legal doctrine and the repeated rulings of our Federal courts that injunctive relief cannot be afforded in speculative instances.

Senator HENNINGS. Is it not true though, Senator, that certain administrations, not to mention the present one, seem to be vested with clairvoyant powers?

Senator TALMADGE. I am well aware of the presumption that certain Attorney Generals have seemed to think they possessed clairvoyant powers but I am strongly of the opinion, Mr. Chairman and gentlemen of this committee, that we must get back to the fundamental concept of constitutional law and liberty in our land.

An adjunct of that authorization would be to allow the Attorney General to file injunctive proceedings and civil suits for private individuals whom he considers to have been deprived of their civil rights whether those individuals desire to go into court or not.

Not only does such a proposal presuppose the existence of an Attorney General with the wisdom of Solomon but also it anticipates making him a glorified nationwide public prosecutor and protector and the de facto legal guardian of 170 million Americans.

The most alarming of all the aspects of this proposal is that to empower the Attorney General to initiate his lawsuits "without regard to whether the party aggrieved shall have exhausted any administrative or other remedies that may be provided by law."

Enactment of that proposal, gentlemen would be the death knell for State and local self-government in this country and apparently indicates that the Department of Justice no longer considers the 10th amendment an integral part of the Constitution of the United States.

Senator HENNINGS. That is as to the reservation of powers, the delegation of powers?

Senator TALMADGE. I didn't get the chairman's question?

Senator HENNINGS. The 10th amendment as to the reservation of powers.

Senator TALMADGE. Yes, sir.

Senator HENNINGS. Not given to the Federal Government are reserved to the State.

Senator TALMADGE. The 10th amendment as I believe reads substantially as follows: "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."

(3) The proposal to protect the right to vote by providing for injunctive proceedings initiated by the Attorney General against any individual who may be thought to be interfering with the right of another individual to vote is totally without constitutional authority. The Supreme Court has held repeatedly that the 14th and 15th amendments can be implemented only with respect to State action and only then in cases where the franchise is denied due to unlawful discrimination on account of race, color, or previous condition of servitude.

Regulation and protection of the franchise except in those instances is a constitutional prerogative of the states.

To make it otherwise clearly would require a constitutional amendment.

Gentlemen of the subcommittee, I have attempted to be factual and specific in the presentation of my view that the legislation which you have under consideration threatens to destroy the civil rights of the American people.

While I am aware of the partisan, political motivations of these proposals, I have tried to discuss them from a national rather than a sectional viewpoint. I can see in these bills a grave threat to the civil rights of all Americans whether they live in Chicago or Atlanta, Oregon or Maine. And I feel it incumbent upon me, as a Senator of the United States, to speak out in warning of the potential consequences of such legislation.

I would be less than realistic if I did not admit to myself and to you that these measures are aimed at the peculiar problems of my State and region. And I would be the last to deny that those problems exist though, in all fairness, I must hasten to add that they are not problems of our own creation.

In a nation as large as ours, it is possible to find examples of injustice anywhere, from the Indians of the Southwest to the Eskimos of Alaska. Civil rights are violated in the Middle West and the East just as often as they are in the South and on the west coast.

But the mere fact that injustices do occur and civil rights are sometimes violated cannot by any stretch of the imagination be said to be justification for the destruction of constitutional government and the abrogation of constitutional guaranties.

State and Federal courts are now available and no one has said that they are not handling their jobs.

Just as a farmer would not burn down his barn to get rid of the rats so would no thinking American wish to jeopardize his heritage of constitutional freedom in search of a quick cure for human failings which have plagued mankind ever since Eve bit the apple in the Garden of Eden.

To those who might disagree with my viewpoint I would point to the example of Samson.

It is true that by pulling down the temple he destroyed his enemies.

But it likewise is true that in the process he also destroyed himself.

Mr. Chairman, that concludes my remarks. I will be happy to answer then any questions that I can.

Senator HENNINGS. Senator, if I have not already expressed it, we appreciate your taking the time to come and testify. Your very carefully worded and thought out statement must have taken considerable time to prepare.

Senator TALMADGE. Thank you, Mr. Chairman, I appreciate the privilege of appearing before this committee.

Senator HENNINGS. Senator Ervin, have you any questions?

Senator ERVIN. Just one question. Senator, I would like to commend your excellent statement and put this question to you:

Is it not your view that if Congress were to pass these proposed amendments, it would be selling the constitutional birthright of the American people for a mess of political pottage?

Senator TALMADGE. I agree wholeheartedly with the Senator. In my opinion those who contend there are additional civil rights which must be protected—and I maintain all civil rights are already guaranteed by the Constitution—would destroy the civil rights we presently possess in the name of seeking more. It would be similar to the old Aesop's fable about the dog who had a piece of meat in his mouth and he saw the reflection of his image in the water which looked like another dog with another piece of meat in his mouth and he leaped

in the stream to get both pieces of meat and lost the one he had in his mouth.

Those who sponsor this legislation can expect the same end result. They not only will destroy their own civil rights but the civil rights of all Americans in the process.

Senator HENNINGS. May I ask you a question?

Senator TALMADGE. Yes, sir.

Senator HENNINGS. Will the other members of the committee yield to me?

What is the population of the State of Georgia?

Senator TALMADGE. About 3,600,000.

Senator HENNINGS. How many registered voters have you in the State?

Senator TALMADGE. Approximately 1 million, sir. A little more than a million. I might add that well over 150,000 of those are colored and that we poll more colored votes in several counties than we do white votes.

Senator HENNINGS. What percentage of your voting population vote in general elections?

Senator TALMADGE. It varies according to the issues.

Senator HENNINGS. From your registered voting population?

Senator TALMADGE. In general elections.

Senator HENNINGS. Yes, sir.

Senator TALMADGE. We normally don't take general elections in my State too seriously, Mr. Chairman.

Senator HENNINGS. So I have read.

Senator TALMADGE. However, in the last two presidential elections, due to the great popularity of the President of the United States, almost as many votes were polled as in the primaries.

Senator HENNINGS. You mean the present President of the United States?

Senator TALMADGE. Yes, sir.

Senator HENNINGS. Times have changed since my great grandfather left Georgia.

Senator TALMADGE. We don't get unduly alarmed about winning a general election down there but we can no longer go fishing on the day of the general election.

Senator HENNINGS. So I have gathered by reading the election returns, Senator.

Would you like to inquire, Senator Watkins?

Senator WATKINS. I wondered if I heard right that you said there are some abuses?

Senator TALMADGE. Yes, one can find instances of civil rights abuses in every State and in every community in this land.

Senator WATKINS. What is your remedy for the particular abuses down in your area?

Senator TALMADGE. We have the courts available. Our citizens use them wherever there are abuses of rights and if the abuses have been real, substantive and legal, they are corrected according to law.

Senator WATKINS. You think that is all taken care of down there?

Senator TALMADGE. I wouldn't say that it ever will be taken care of entirely. I don't expect human beings ever to become perfect until we leave this earth.

Senator WATKINS. For instance, take the right to vote, do you think that that right is generally accorded every citizen of your State?

Senator TALMADGE. More Negroes vote in Georgia than any State in the Union.

Senator WATKINS. I am asking you about Georgia, not what they do in other States.

Senator TALMADGE. Any legally qualified citizen of George who registers has an opportunity to vote.

Senator HENNINGS. May I inquire: Do you have the aurora borealis test?

Senator TALMADGE. I beg your pardon.

Senator HENNINGS. In Alabama they have the aurora borealis test.

Senator TALMADGE. I am unfamiliar with the procedures of the great State of Alabama.

Senator HENNINGS. In the great State of Alabama if a Negro voter appeared and had paid his poll tax, they look him over and they finally say, "Now, look, Uncle, it looks like you are qualified to vote, but we have to give you one little test. Please spell 'aurora borealis.'" I suppose nothing like that happens in Georgia?

Senator TALMADGE. I wouldn't attempt to comment on the procedures of the great State of Alabama.

Senator HENNINGS. Does Georgia use an educational test?

Senator TALMADGE. That is a matter that addresses itself to the State and citizens of Alabama. In my State we have a simple literacy test which the legislature has adopted, that literacy test is composed of 30 questions such as: Who is the President of the United States? Who is the Governor of Georgia? How many States in the Union? And any citizen can answer 20 out of those 30 questions is qualified by law to vote.

Senator WATKINS. Is that same test applied to all citizens?

Senator TALMADGE. It applies to all citizens.

Senator WATKINS. I say is it?

Senator TALMADGE. Yes, sir; it does apply to all citizens.

Senator WATKINS. Do they actually ask every citizen that comes up those questions?

Senator TALMADGE. That is the law.

Senator WATKINS. I know that is the law.

Senator HENNINGS. If they are in doubt, they ask.

Senator TALMADGE. I would say this: There is no discrimination shown. If a registrar complies with the law he asks those questions. There perhaps are registrars in every State of the Union who don't take the trouble to comply with the law.

Senator WATKINS. That's probably true and it could exist in Georgia too.

Senator TALMADGE. I have never been informed of any of Georgia's 159 counties where they are not complying with that statute.

Senator WATKINS. I got the impression when they came up to vote this was applied to them.

Senator TALMADGE. No; they must register in my State 6 months prior to the time they vote and when they go in to register this literacy test is applied at that time.

Senator WATKINS. And by the registration agent?

Senator TALMADGE. The names are all enrolled on the registration list long before the time of the primary or general election.

Senator WATKINS. What I ask is, Is it applied by the registration agent?

Senator TALMADGE. Yes; it is.

Senator WATKINS. Who applies the test?

Senator TALMADGE. The tax collector acts as the registration agent in each county of my State.

Senator WATKINS. Who applies the test?

Senator TALMADGE. The tax collector of the county.

Senator WATKINS. Every citizen who applies has to take the test?

Senator TALMADGE. Yes.

Senator WATKINS. White as well as colored?

Senator TALMADGE. Yes, sir.

Senator HENNINGS. It so happens my family came from Greene County, Ga., Greensboro by name.

Senator TALMADGE. It would interest you to know there are approximately 2,000 Negroes registered to vote there now as compared with 3,000 whites.

Senator HENNINGS. That is the so-called black belt, very productive land. And there is Macon County, as opposed to Greene County, where the land was poorer. In Greene County the land was richer then and there were more slaveowners.

Senator TALMADGE. Yes, sir.

Senator HENNINGS. Could you tell me how does Greene County stand on that now?

Senator TALMADGE. I just explained to the Chair.

It has about as many registered colored voters as they have white at the present time, something in excess of 2,000. And something near 3,000 white voters.

Senator WATKINS. Mr. Chairman, may I get to the line of questioning I was pursuing? I never voted down in your State and I have never been present at an election or when they were registered. There is a lot of complaint on the part of some citizens in your State and other Southern States. How does this work out actually in practice in applying this test?

Senator TALMADGE. I will try to give you an example, sir. We will assume that the person who desires to vote at the next election will be 18 years of age at the time of voting, that is the legal age in Georgia. We will assume that they live in Hinesville, Liberty County, Ga. Whoever that individual is, be he white or colored, goes to the courthouse of Liberty County, goes to the tax collector, or if the tax collector is absent, his authorized deputy.

The individual will walk in and say that he or she desires to register to vote. It would then become the duty of the tax collector or his authorized deputy to produce his registration books, pull out the questions which are listed by the statute of Georgia, and then read off those questions. It would be the duty of the applicant for registration to answer satisfactorily 20 of them. If they did that their name would go on the list.

Senator WATKINS. The registration agent then would be the sole judge of whether or not the questions had been answered properly or whether or not they had been asked properly.

Senator TALMADGE. No, provision is made for an appeal to the board of registrars. The board of registrars are appointed, recommended by the grand jury of the citizens of the county and appointed

by the judge of the superior court and wherever there is any dispute as to the qualifications of any citizen to vote, the registrars are the last administrative resort and then following the exhaustion of all administrative remedies they may go into the State courts or to the Federal courts and ultimately wind up in the United States Supreme Court.

Senator WATKINS. Have any voters that you know of in your State ever used those remedies?

Senator TALMADGE. You mean in litigation?

Senator WATKINS. Yes.

Senator TALMADGE. Yes.

Senator WATKINS. That seems to be a pretty long affair?

Senator TALMADGE. Yes, we have had litigation of that sort. Sometimes the plaintiffs win; sometimes they lose.

There have been 2 cases of litigation within the past 12 months in Georgia. One judge restored a group of citizens to the rolls; another judge would not. It is a matter of law and it was decided by Federal judges in my home State appointed by the President of the United States.

Senator WATKINS. Are there any complaints by white citizens that they are discriminated against in the applying of this test?

Senator TALMADGE. Yes, sir; there have been complaints from both white and colored citizens, many of them think they ought to be entitled to vote whether they can read or write or whether they know how many States in the Union or whether they even know which State they reside in.

Senator WATKINS. Of course, you could go on I assume and you could get some questions that would disqualify any voter if you went far enough with the question?

Senator TALMADGE. I might say for the information of the Senator that this procedure has worked to the advantage of the colored citizens because they have held group meetings in the churches, schoolhouses to learn the answers. The questions are very simple and anyone with a minimum of knowledge can memorize the answers in a matter of 2 or 3 hours. In some instances the colored citizens of my State are registered and vote in greater percentage to their numbers than do the whites.

Senator WATKINS. Why do you suppose if it works to their advantage they are complaining about it?

Senator TALMADGE. None of them are complaining to my knowledge.

Senator WATKINS. No complaints on this score?

Senator TALMADGE. One could cite complaints about anything. If you read your mail this afternoon, you will find any number of complaints originating in your home State.

Senator WATKINS. No, not in my State.

They don't complain out there.

Senator TALMADGE. If you don't get complaints in your mail you are a very unusual Senator.

Senator WATKINS. I don't claim to be unusual.

Senator TALMADGE. I get complaints about the food people eat; about the price of cotton; about everything under the sun.

Senator WATKINS. I would like to know if everything is moving along just in the normal course why it is we have this continual issue

about civil rights in the South. We don't seem to have it anywhere else. I am a citizen that doesn't know all the answers. I have been here for 10 years——

Senator TALMADGE. The complaints are originating——

Senator WATKINS. Just a minute, sir.

Senator TALMADGE. The complaints are originating in the States of the metropolitan East where this issue is being used to secure the votes of colored people in Detroit, Philadelphia, New York, and Chicago.

Senator WATKINS. I have been under the impression that the Republicans get caught in between. In the South the politicians down there use another phase of this same problem and up in the North they use the other side and they work both sides of the street and the Republicans are caught in between.

Senator TALMADGE. It is a political issue centered largely in the East. If the Senator would care to come down and visit my State and observe conditions there he would see the finest system of schools operated with limited resources that any State has ever had. He would find the same true of hospitals, health centers, and all other public institutions, and services of all of them are equally applicable to white and colored citizens.

Senator WATKINS. I know you have a great State; I have been through it. Will you tell me now what is the proportion of the colored people who apply for registration who are rejected because they can't pass this test? If the schools are as good as you say they are, there ought not to be anybody rejected because of that test.

Senator TALMADGE. The percentage of both white and colored rejections is very small.

Senator WATKINS. Do the colored people there most generally speaking apply for registration?

Senator TALMADGE. The situation varies from county to county. Wherever they have energetic and aggressive political leaders they have registered in large numbers. As I explained to the committee a moment ago, in many counties of Georgia we have more colored people voting than we do white people.

Senator WATKINS. Do they have more difficulty than the white people to qualify?

Senator TALMADGE. Not anywhere of which I have been informed, Senator.

Senator WATKINS. You have been the Governor of your State; you would be likely to know about it if there had been?

Senator TALMADGE. Yes; I think I would.

Senator WATKINS. Are there any statistics available on this point? I am very much interested as an objective person.

Senator TALMADGE. I can't give you the figures. Out of some approximately 1,200,000 registered voters, we only have about 600,000 to 800,000 people vote. Of that number, approximately 150,000 to 175,000 of them are colored, and a much higher percentage of colored registrants do vote than is the case among the white people.

Senator HENNINGS. I think the Senator doubtless has read Rapier's study of the counties, one called Preface to Peasantry and in the other called Tenants of the Almighty.

Senator TALMADGE. I don't believe I have read either book.

Senator HENNINGS. They are both studies of the voting and educational records and I must say that in Macon County it reflects that the schools are far better than in Greene County.

Senator TALMADGE. The other test we have is statutory, providing that moral character is a prerequisite to voting and specifying that convicted felons are ineligible to vote.

Senator WATKINS. Those are the other tests you have?

Senator TALMADGE. They are never used except as a basis for challenge.

Senator WATKINS. You don't have the poll tax in your State?

Senator TALMADGE. No, we don't have the poll tax in Georgia.

Senator WATKINS. You don't have any qualifications with respect to owning property?

Senator TALMADGE. There are no requirements with respect to owning property.

Senator WATKINS. The only tests then are the ones you mentioned?

Senator TALMADGE. Morality and literacy.

Senator WATKINS. Morality?

Senator TALMADGE. Yes.

Senator WATKINS. How do you get that one?

Senator TALMADGE. If you came to Georgia and committed murder you wouldn't be eligible to vote.

Senator WATKINS. That is not the only one, is it?

Senator TALMADGE. Good moral character would be involved if persons were living openly and notoriously in adultery, and such persons could be challenged. If that fact could be proven to the satisfaction of the registrars, the names of such persons theoretically could be removed from the voters' list.

Senator WATKINS. Is that done?

Senator TALMADGE. That procedure is seldom, if ever, used.

Senator WATKINS. What about theft?

Senator TALMADGE. I don't recall the exact language of the statute, but it applies generally against any person convicted of a felony.

Senator WATKINS. Are there court interpretations on what you mean when you have this moral test?

Senator TALMADGE. Yes, I don't remember the exact language.

Senator WATKINS. Do you have the language of your statute that provides for these tests?

Senator TALMADGE. No; I left my law library at home, but I am sure it appears in the law library of Congress.

Senator WATKINS. I'd be interested to have in the record the tests required.

Senator TALMADGE. I'll be happy to possibly procure it for the Senator, if you desire.

Senator WATKINS. I think it would be well to have it for the information of a lot of other fellows who are as ignorant as I am.

Senator TALMADGE. The same statute applies as applies with respect to public office. Whatever it may be, it is a public trust, and he must have a minimum of character requirements. You couldn't run for judge of the superior court or for the legislature down there without some character background. If you had been convicted of a felony you wouldn't be eligible.

Senator WATKINS. This registration agent again is the man who gives this test or passes on the moral character of the people?

Senator TALMADGE. That is correct.

Senator WATKINS. You call him a tax agent but, in effect, he is a registration agent.

Senator TALMADGE. He is a registration agent subject to administrative appeals. He is the clerk involved that is ultimately the responsibility of the board of registrars.

Senator WATKINS. Do you think it is a good thing to leave it to some one man to pass on the morals of a citizen who appears to make application or to get registered so he can vote?

Senator TALMADGE. It is the final duty and responsibility of the board.

Senator WATKINS. But an ordinary citizen can't be going up to appeal along this line all the time. He does not have the money to get down to make an appeal to some board.

Senator TALMADGE. No counsel is necessary, no fee is required.

Senator WATKINS. It may not be necessary to an average citizen or those better educated than others but I take it for granted that any person who had to go to a court or a board of review an ordinary citizen who is not familiar with procedures in the courts and that sort of thing would be handicapped and would be afraid and have to be hesitant to do it in order to get his rights.

Senator TALMADGE. I don't think you understand the procedures in Georgia very well.

Senator WATKINS. I am trying to understand them. When you say you have a moral test, I never heard of that in any other place before.

Senator TALMADGE. May I ask the Senator a question?

Senator WATKINS. No; you are on the witness stand.

Senator TALMADGE. I will use it then by way of a hypothetical statement.

I don't think you could sit in the Senate if you had been convicted of murder in your State.

Senator WATKINS. We will agree with that; the situation can be established.

Senator TALMADGE. The situation is the same in Georgia with respect to voters.

Senator WATKINS. Does it go beyond conviction for a crime?

Senator TALMADGE. Not to my immediate knowledge. I don't remember the exact language, but I believe it relates to moral character, and crimes involving moral turpitude.

Senator WATKINS. Would the stealing of chicken be such a crime?

Senator TALMADGE. I don't know whether the penalty for stealing chickens in Georgia constitutes a felony or misdemeanor.

Senator WATKINS. It would ordinarily be a misdemeanor?

Senator TALMADGE. Yes; a misdemeanor.

Senator WATKINS. It would involve some moral turpitude; would it not?

Senator TALMADGE. The court has defined it to be a crime involving a felony.

Senator WATKINS. Punishment by being confined to the State prison?

Senator TALMADGE. Yes; for a year or more.

Senator WATKINS. If that is the only test with respect to morals then it wouldn't involve very many people.

Senator TALMADGE. It doesn't involve very many people. It is not enforced to any great degree.

Senator WATKINS. Why shouldn't it be? If it is a good statute why shouldn't it be enforced to the utmost degree?

Senator TALMADGE. I'm sure the Senator is aware that through the weakness of human action many of our statutes are not enforced to the letter. I'm informed that some in Washington are not enforced strictly according to the law.

Senator HENNINGS. The Senator had a little trouble with that in his State.

Senator WATKINS. Yes; we had some trouble. If we didn't we wouldn't be a State.

Senator TALMADGE. I concur that there will always be troubles until we eventually go to heaven.

Senator WATKINS. I'm not so sure about that. I'm sure that some of them will have a lot of trouble over there. Do you have any statistics on the number of people who apply for voting to register to vote who are turned down for moral reasons?

Senator TALMADGE. I do not, sir.

Senator WATKINS. You say you don't remember the words of the code.

Senator TALMADGE. As I recall, it specifies a crime involving moral turpitude but I couldn't testify with any degree of accuracy, without having the text of the statute before me.

However, I can say to the Senator that in Georgia qualified citizens who seek to register are registered and if they desire, can vote.

Senator WATKINS. I'm interested in finding out. They have said they have a denial of civil rights, there are citizens who claim that happened down there.

It is interesting to see that you have such a test and you leave it to tax collectors to make the determination whether the man has the moral qualifications to vote or not to vote.

If a man is given that wide leeway he could certainly deny one of the great fundamental rights and do it very easily and simply look at him and say I don't think you are morally qualified to vote.

Senator TALMADGE. I can assure the Senator that that is not used on the basis he seems to think.

Senator WATKINS. We don't have the language of the statute here and we don't have statistics at the moment as to how many are turned down. Do they keep a written record of those who are turned down?

Senator TALMADGE. Yes, sir.

Senator WATKINS. Does it explain in any detail or merely say not morally qualified?

Senator TALMADGE. Senator, I don't think anyone ever is turned down as the result of the commission of crimes involving moral turpitude unless it is a matter of official record in the courthouse that he has been convicted of a crime involving such.

As an administrative matter, anyone who can pass the literacy test is enrolled on the voting list.

However if any citizen who sees fit to challenge that individual for a crime involving moral turpitude can do so and in such case it is the duty of this board appointed by the judge of the superior court to determine the issue.

Senator WATKINS. We are getting somewhere now. I was trying to find out how this test was applied.

Senator TALMADGE. I was trying to state it as simply as I know how.

Senator WATKINS. I understood the tax collector who is the registration agent——

Senator TALMADGE. The tax collector merely is the agent of the board of registration in enrolling the names of voters.

Senator WATKINS. He is the man who meets the citizen when he comes up?

Senator TALMADGE. He is the man who is present when they execute the signature; yes.

Senator WATKINS. Are there any other qualifications that are required of citizens to be voters besides having to pass this literacy test and be of good moral character?

Senator TALMADGE. They must be 18 years of age at the time of voting.

Senator WATKINS. Any residence requirements?

Senator TALMADGE. Yes, sir. They must be a resident of the State for 12 months and of the county for 6.

Senator WATKINS. How about transfers from one county to another; suppose a voter moves?

Senator TALMADGE. Normally under those procedures you just have the tax collector on one county write the other county and get it, or you can get your transfer and take it with you, but you cannot vote until 6 months after you move into the new county.

Senator WATKINS. Would the county to which the voter transfers also have the right to compose the literacy test given?

Senator TALMADGE. My understanding is that once a person is registered on the voters' list, his name is not removed unless successfully challenged in accordance with Georgia law.

Senator WATKINS. Thank you, Senator. I wanted to get some information on what you do require there. I have heard so many wild charges about requirements for voting in these various states I think we ought to know exactly what requirements are there and how they are applied and whether or not they are applied equally with the same force to all kinds of citizens, irrespective of race.

That is all the questions I have, Mr. Chairman.

Senator HENNINGS. No further questions from the Senator from Utah.

The Senator from Nebraska.

Senator HRUSKA. Reference is made in your statement to some of the acts and some of the employees of the Department of Justice going to various places conducting investigations and so on; have any of those been in your State?

Senator TALMADGE. Yes, sir. The Cobb Superior Court in Marietta, near Atlanta, Ga., twice convicted a Negro for raping a white woman. The conviction was reversed by the Georgia Supreme Court on a technicality and the Negro was tried the second time. After the matter had been appealed again to the supreme court of my State, some FBI agents came down to interrogate the solicitor general and the judge of the superior court. This caused considerable concern on the part of the people of that county and of my State that such an

unwarranted interference with the processes of justice of our State court could take place.

Senator HRUSKA. Is that the only instance where representatives of the Department of Justice came to your State?

Senator TALMADGE. No; I am sure that it is not. That is the most recent and the most notorious. Here was a situation involving State law and State law alone, and yet the Attorney General sent agents of the Department of Justice to question the judge of the superior court about the administration of justice in his circuit.

It was the most unwarranted interference with the operation of the State government and the administration of justice, to my knowledge.

Senator WATKINS. When did this happen?

Senator TALMADGE. The agents of the Department of Justice made their investigation about a year ago. The rape took place 5 or 6 years ago.

Senator HRUSKA. Either there was some charge made or some issue involved, Senator, whereby the State sought to deprive a person of life, liberty, or property without due process of law; there would lie jurisdiction of Federal agencies, wouldn't there?

Senator TALMADGE. Not unless it was a matter of official cognizance by or jurisdiction of a Federal court. Here was a voluntary act on the part of the Attorney General of the United States in which the Department of Justice assumed jurisdiction of a matter relating purely and solely to a State court.

Senator HRUSKA. But the 14th amendment to our Federal Constitution forbids a State from depriving any person of life without due process of law. If that issue were involved, it would require Federal jurisdiction and it would be a matter of Federal jurisdiction.

Senator TALMADGE. The 14th amendment, Senator, is aimed only at State action.

Senator HRUSKA. The trial of a man and sentencing him to death would certainly be a State action, would it not?

Senator TALMADGE. It certainly would be, but it would be through Government operation. If we are to have agents of the Department of Justice swarm into every State in this Union on the imagined complaint of any individual, then the best thing we can do is dissolve the 48 States and turn their functions over to the Federal Government.

Senator HRUSKA. How many other times did they swarm into Georgia besides the instance you mention?

Senator TALMADGE. I do not have the exact number.

Senator HRUSKA. Have any instances arisen where investigations of this type have been made by the Department of Justice on account of voting or registering of voters, that you know of?

Senator TALMADGE. Not recently.

Senator HRUSKA. In more recent years, have they done that?

Senator TALMADGE. They came into the State immediately after the colored people had the right to vote.

Senator HRUSKA. That is many decades ago.

Senator TALMADGE. That was some 10 years ago.

Senator HRUSKA. Is that when the colored people got their right to vote?

Senator TALMADGE. They started voting in primaries at that time, Senator. We used to have in Georgia what was known as the white

primary, in which the white citizens nominated their candidates and offered them in the general election.

Senator HRUSKA. That has since been changed?

Senator TALMADGE. Has since been changed by Federal action; yes.

Senator HRUSKA. I think that is all, Mr. Chairman.

Senator ERVIN. Mr. Cairman, I would like to make one observation.

Senator HENNINGS. The senior Senator from North Carolina.

Senator ERVIN. I am very much interested by the statement of the distinguished Senator from Georgia as to the place of origin of most of these charges against our particular area of the country, and I would just like to say this: that I have lived in North Carolina all my life, that as a superior court judge I have held superior court in approximately 45 of our 100 counties, and that I have also sat upon the State supreme court for something over 6 years, and at other times I have practiced law, and during that time I never knew or heard of a single person, either white or black, being denied the opportunity to register or vote until the Attorney General came here the day before yesterday and told us about some case down there in the courthouse precinct in Camden County where 2 colored men were allegedly denied the right to vote, and he gave 2 other instances of alleged misconduct on the part of 2 others; that makes a total of 3 out of the 7,500 election officials in North Carolina. That is all.

Senator HENNINGS. Did the senator complete his statement?

Senator ERVIN. Yes, sir.

Senator HENNINGS. I doubt whether it would be proper for the chairman as a judge might to declare it a matter of universal knowledge that the Negro in the South is entitled to the full privileges of the franchise so I only make that as an observation and not a declaration.

Senator ERVIN. I think, Mr. Chairman, every citizen who is of the proper age and possesses the qualifications is entitled to vote in the South and everywhere else, provided he registers, and I think there is no question about that.

Senator HENNINGS. There seem to be no further questions.

I want to thank you very much for having taken the time and for your patience.

Senator TALMADGE. Thank you, Mr. Chairman and gentlemen of the committee.

Mr. SLAYMAN. Mr. Chairman, before calling the next witness, I would like to make a preliminary statement which I hope may save some prolonged questions about some of the matters.

The statement is simply this: that outside of Members of Congress—United States Senators and United States Representatives—the Attorney General of the United States was the only person who has been specifically invited to appear in person and testify before the Subcommittee on Constitutional Rights of the Committee on the Judiciary of the United States Senate.

But we have had many, many requests for permission to testify from people, individuals, and organizations, and some of these requests we have not yet been able to comply with, in scheduling witnesses. Some of these people have come at their own expense from hundreds of miles away, and have been in Washington, D. C., now waiting for 2 or 3 days. It has been suggested that we might put on three of

them at the same time so that if there is cross-examination, they might be questioned en banc or individually, in connection with their general testimony which is to the point of individual, firsthand factual instances of alleged deprivations of Federal constitutional rights.

None of these people has been invited in the sense that we contacted them. They have in each case asked to be heard. There has been no solicitation or canvassing carried on by the committee or the staff, and of course as everyone knows, there are has not been any subpena issued for any witnesses to appear.

Senator HENNINGS. I understand that this is to be more or less factual testimony?

Mr. SLAYMAN. Yes, Mr. Chairman.

Senator HENNINGS. In that case, I would suggest that each witness either severally or collectively may be sworn.

Mr. SLAYMAN. I was going to recommend that, Mr. Chairman.

Senator HENNINGS. I also regret very much, and I say this in deference to all who are appearing here, you can see how the time schedule is running, and we do not want to, in any wise, foreclose any witness from making any statement the witness desires to make under any circumstances.

Senator ERVIN. Mr. Chairman, I am a little at a loss to understand how three men can testify at the same time.

Senator HENNINGS. That presents a rather complex problem, I think, Judge.

However, I understand that there are three statements here. They have just been handed to me. I pressume we will take them seriatum.

Mr. SLAYMAN. Mr. Chairman, with regard to this last point of your ruling, I was going to suggest that although all the witnesses we have heard thus far in the hearings, and most of the witnesses still to be heard, are presenting what is generally regarded as opinion testimony, these people are going to testify from first hand, personal experience in alleging that their civil rights have been denied, and for this type of witness, I believe that we are on the soundest ground by placing them under oath for their testimony.

Senator HENNINGS. May I say to counsel that that is the invariable procedure followed by the committees I have served upon.

I now get back to the distinguished Senator from North Carolina's question.

What is your suggestion, Mr. Counsel?

Mr. SLAYMAN. Mr. Chairman, I have not seen their statements, but I would suggest all three be sworn at the same time and sit out there at the witness table. I have cautioned them I think nearly a dozen times that we are running out of time, that we hope their statement in each case will be brief. But because this is a collection of alleged violations of constitutional rights, the same fundamental question is presented to the subcommittee, so that I would suggest, subject to whatever the committee may want to approve, that they appear for 2 or 3 minutes apiece.

Senator HENNINGS. May I suggest to my colleagues on the committee that they be sworn jointly if there is no objection?

Senator ERVIN. I have no objection to their being sworn jointly but I certainly would be to their testifying jointly, sir.

Senator HENNINGS. You don't want a chorus, in other words.

Senator WATKINS. I think what counsel has in mind, when a Cabi-

net official testifies he has a half dozen people with him and they all testify before he gets through.

Senator HENNINGS. Or they all tell him what to say.

Senator WATKINS. Maybe that is it.

Senator HENNINGS. Will the witnesses please come forward and present themselves.

Will you please raise your right hands and repeat after me: I do solemnly swear that the testimony I am about to give before this subcommittee shall be the truth, the whole truth, and nothing but the truth, so help me God.

Mr. WALDEN. I do solemnly swear that the testimony I am about to give before this subcommittee shall be the truth, the whole truth, and nothing but the truth, so help me God.

Mr. COURTS. I do solemnly swear that the testimony I am about to give before this subcommittee shall be the truth, the whole truth, and nothing but the truth, so help me God.

Dr. BORDERS. I do solemnly swear that the testimony I am about to give before this subcommittee shall be the truth, the whole truth, and nothing but the truth, so help me God.

Mr. MITCHELL. Mr. Chairman, with your indulgence may I identify myself for the record and just explain this situation in about 2 minutes?

Senator HENNINGS. You may indeed, Mr. Mitchell.

Mr. MITCHELL. I am Clarence Mitchell, director of the Washington bureau of the National Association for the Advancement of Colored People.

We have sought an opportunity for these individuals to appear before your subcommittee on our own initiative.

No one invited us. Because of the deep concern that these gentlemen, and others, have about civil-rights problems, they are here today. We have sought in the House of Representatives to expedite the hearings by not having individual witnesses appear.

We were challenged by a number of State authorities who said that these were not actual instances of violations that we presented. They said they were fabrications which organizations located on the eastern seaboard had dreamed up for the purpose of creating political fire.

Therefore, I prevailed upon these gentlemen to come out of their busy lives and report to this subcommittee.

I have asked two of them if they would include, for the benefit of the subcommittee, personal references to themselves. I make that explanation because these gentlemen were modest. They did not want to include it. They resisted it. I insisted that they do it in order that you members of the subcommittee could know what they are like in their communities.

The third gentleman, Mr. Gus Courts, was not present at the time I made that suggestion. However, I have a one-page biographical statement on him that I would like to offer to the subcommittee. It is simply this: that Mr. Courts—I will read it——

Senator HENNINGS. Mr. Mitchell, you are reading from a statement?

Mr. MITCHELL. Yes, sir; this is a biographical statement.

Senator HENNINGS. I am afraid that under the rule as invoked——

Mr. MITCHELL. I am happy to testify under oath, if you wish. Is that what you are getting at?

Senator HENNINGS. I will ask you to be sworn, too.

You do solemnly swear that the testimony you are about to give before this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. MITCHELL. I so swear, Mr. Chairman.

TESTIMONY OF CLARENCE MITCHELL, DIRECTOR OF WASHINGTON BUREAU OF THE NAACP—Resumed

Mr. MITCHELL. I would like to add this for the record: I here and now make the charge that the attorney general of the State of Louisiana has deliberately and falsely misled the Congress on issues of voting in his State. I urge that, if he comes before this subcommittee, he, too, be placed under oath, because his testimony before the House of Representatives is in direct contradiction to testimony submitted to this subcommittee and to the House committee on the issues of voting in the State of Louisiana.

I also urge respectfully, Mr. Chairman, that every single official of the southern States who comes before this subcommittee to testify on specific——

Senator HENNINGS. May I suggest, Mr. Mitchell, that you be good enough to make note of your suggestions and hand them to Mr. Slayman.

Mr. MITCHELL. I will certainly do that.

Senator WATKINS. Mr. Chairman, it is the rule, is it not, if one witness is to be sworn, they are all to be sworn; isn't that right?

Senator HENNINGS. I don't think the rule is invariable. I might say that when the Attorney General of the United States and the distinguished Senator from North Carolina engaged in a colloquy about the interpretation of certain laws, that was only opinion evidence.

Senator WATKINS. It does not make any difference, opinion or otherwise. They have to be sworn. If one witness is sworn, they all have to be sworn. I don't see any reason for——

Senator HENNINGS. Does the Senator suggest, then, that we go back to the last 3 days and have the Attorney General and all of the various witnesses sworn?

Senator WATKINS. No; I do not, but I think from here on they ought to be sworn. You cannot correct what you did before.

Senator HENNINGS. I have no objection whatsoever, except opinion testimony is opinion testimony.

Senator WATKINS. That is true, but they are sworn nevertheless.

Senator HENNINGS. Well, sometimes, but this is not a court. We have often heard testimony before committees of the Senate and the Congress predicated upon opinions. That does not require that a witness swear to his understanding or his knowledge or interpretation of a given statute or law.

Senator WATKINS. Maybe I am unduly belaboring this, but I have been in court for several years and, whether it is opinion or otherwise, witnesses were all required to take the oath.

Senator HENNINGS. May I respectfully remind my good friend and colleague from Utah that we do not require the taking of oath, by and large, on opinion testimony.

If a man reads an opinion relating to legal matters and his interpretation of legal matters, that is not based upon other than his own interpretation.

We are now getting into factual matters, matters of transgression, I understand, upon these several gentlemen who appear here, and there is quite a distance between courts and congressional hearings.

Just this morning the Attorney General of the United States raised the point, raised the objection that he thought certain questions being asked of him were improper questions.

The Senator knows better than I do that a great many things are in the realm of opinion, a great many things are in the realm of fact.

Senator ERVIN. Mr. Chairman?

Senator HENNINGS. I would like all the guidance I can have from my learned friend.

Senator ERVIN. I was just going to make this observation: Having looked at the nature of these statements, it is going to be an impossibility to finish with a single one of these witnesses this afternoon, because there are some lengthy charges without specifications. I think the most important thing, as Senator Watkins suggested a while ago, is to find out whether there is basis for these alleged charges of discrimination. I am going to cross-examine——

Senator HENNINGS. I might say to my colleague that I have not seen the statements before myself.

Senator ERVIN. I just looked at them now. For example, in one of the statements——

Senator HENNINGS. But are we away from the question now of matters of opinion, as to whether an injunction would lie in certain circumstances, or whether a legal opinion would or would not prevail? Are we away from that? Is the Senator reasonably satisfied as to that?

Senator WATKINS. Mr. Chairman, you are the chairman and whatever your ruling is, of course, I will have to abide by it, but I have never seen a case yet in which, no matter who the witness was, he did not get into matters of fact as well as matters of opinion. Lay witnesses sometimes get into opinion and they also have questions of fact. As far as I know, universally in court——

Senator HENNINGS. Rather than belabor the point, Senator, since most of it during your absence has been purely in the judgment, interpretation of laws and statutes, I will now make the ruling, so that we will not waste any further time, that all witnesses be sworn under all conditions, whether it is necessary or not. There is no use quibbling.

Senator ERVIN. When we get past that, Mr. Chairman, I notice here, for example, in the statement made by Austin T. Walden, a statement such as this:

> In some areas, registration and election officials have been conspirators in various schemes to accomplish the above objectives. Sometimes, when Negroes attempt to register, they are told that the books are out; that they are out of blanks; that they will have to come back on a designated day and, on returning, find the office closed.

Now I have long since learned not to accept general statements.

Senator HENNINGS. That certainly amounts to a conclusion.

Senator ERVIN. I am going to ask him about each specific case.

Senator HENNINGS. The Chair is again confronted with the usual dilemma about the array of witnesses, and trying to be fair to all and trying to give all who want to be heard a hearing.

We have been sitting now for 3 days. I think it seems quite obvious, Mr. Mitchell, that you desire to be advocate for the several witnesses, which is well and good, but to me it seems quite obvious from these statements that this sort of testimony is going to take considerable time and a great deal of examination and cross-examination.

Mr. MITCHELL. Could I make a suggestion, Mr. Chairman?

I think, Mr. Chairman, if we permit Mr. Gus Courts, who is formerly from Mississippi, to testify first, he would indicate what happened to him as the result of his personal——

Senator HENNINGS. I am sure the committee would like to accommodate all witnesses, but there are only 24 hours in a day.

Mr. MITCHELL. I realize that.

Senator HENNINGS. It is a cliché, but true enough. That being as it may, some of this testimony is of a factual nature which may be subject to cross-examination and proper cross-examination. I would like to accommodate everybody.

How many witnesses have we, Mr. Slayman? I mean beyond this.

Mr. SLAYMAN. We have about 20 more so far.

Senator HENNINGS. Twenty more so far. I would welcome a suggestion from my colleague from Utah.

Senator WATKINS. May I make a suggestion that we have an executive session of the committee and decide on how many days we are going to hear, and let the various groups represent their cases rather than have a lot of cumulative testimony?

We cannot hear everybody who wants to come here.

Senator HENNINGS. My good friend from Utah recalls that 3 weeks ago I made a motion that the hearings commence and last for a period of 2 weeks, at which time there should be a cutoff date. I don't recall how the Senator voted.

Senator WATKINS. I recall very well, sir.

Senator HENNINGS. I do, too.

Senator WATKINS. It was on the motion to report the bill immediately that I was voting against.

Senator HENNINGS. The Chair wants to give everybody an opportunity, but I am not prepared to stay here and I am sure the rest of these men who work all week from early morning to late at night, the members of the press corps and all others are not prepared to stay until midnight on cross-examination.

I presume that is I were representing one side or another set of circumstances such as this, that, or the other, I would want to study it, I would want to look at it, I would want to perhaps substantiate or make an effort to interrogate the witnesses on the statements.

Senator WATKINS. Mr. Chairman, I made a suggestion about an executive committee meeting to outline exactly what we want to do.

Senator HENNINGS. Is there any objection to that?

Here we are at 4 o'clock Saturday afternoon.

We can't possibly complete it tonight.

Senator ERVIN. I should think not.

Senator HENNINGS. We cannot conceivably complete it tonight. Senator.

Senator ERVIN. It is not possible.

Senator HENNINGS. I think you would be first to admit that.

Senator ERVIN. I certainly will.

Senator HENNINGS. You are indeed a very thorough cross-examiner.

Mr. MITCHELL. Mr. Chairman, could we ask to let the men summarize orally and briefly their statements, file them for the record, and thereafter return for cross-examination?

It is a great hardship.

Senator HENNINGS. Mr. Mitchell, you know that I am in an embarrassing position. I want to accommodate everybody but I cannot accommodate everybody.

Mr. MITCHELL. I understand that.

Senator HENNINGS. It is utterly impossible.

Mr. MITCHELL. I would like to explain, Mr. Courts——

Senator HENNINGS. Mr. Danstedt is over here. He wants to testify and has every good reason to testify.

There are many others here.

Mr. MITCHELL. In this situation, Mr. Chairman, Mr. Courts here, is a man who was shot in Mississippi because he was seeking the right to vote. He has come to Washington for a chance to tell the Senate of the United States what his problem is.

Mr. Austin T. Walden, a respected lawyer in Georgia, has come up to tell about his problem.

The Reverend Dr. Borders, who is pastor of one of the largest churches in the city of Atlanta, has come to tell how he as a clergyman was arrested simply because he was riding on a bus.

Senator HENNINGS. Mr. Mitchell, in no derogation of your assembled witnesses, I would say if the Attorney General of the United States were sitting here, or indeed the President, we would have no way of just going on and on and on and on because this sort of thing requires examination.

I think without objection I will adopt the suggestion of the Senator from Utah.

Is there any objection, Senator Ervin?

Senator ERVIN. I would suggest that we are going to have a meeting of the subcommittee Monday morning to set dates to hear witnesses?

Senator HENNINGS. To try to work the thing out; we have had such an influx of witnesses that it is utterly impossible.

I would like to accommodate you gentlemen. I realize at what an inconvenience you have come here, and I am not unmindful of that.

Mr. WALDEN. Mr. Chairman, may I make this request?

Of course I have commitments for next week, the first part of it which I cannot possibly avoid keeping.

I don't mind coming back, but I would like for it to be Wednesday or Thursday.

Senator HENNINGS. Then why don't we put the testimony over until some time that you can reach an agreement upon?

I don't like to set the time arbitrarily. You are all busy men.

Mr. WALDEN. We will come back whenever you say—except that I could not be here Monday or Tuesday.

Senator HENNINGS. We are in this position: On Tuesday and Wednesday the so-called Eisenhower Doctrine is to reach the floor of the Senate and that will be subject to some debate I would assume, would it not, Senator?

Senator WATKINS. There is some suspicion that there will be some debate.

Mr. MITCHELL. Could I offer a suggestion, Mr. Chairman?

Senator HENNINGS. I suggest that we now stand in recess until Monday afternoon, if we can get permission to sit, which we were denied last time, and the rest of us confer and see what we can work out.

Mr. MITCHELL. Could we file these statements in order that the subcommittee might have a chance to study them prior to the time the witnesses appear again?

Senator HENNINGS. Mr. Mitchell, I do not think it would be proper to file the statements until they have been read under oath.

I am sorry. You can do as you please in filing your statements, but it does not have the color of testimony.

Mr. MITCHELL. I just wish the same rule would apply to the hostile witnesses who come before the subcommittee.

Senator HENNINGS. The subcommittee is now recessed.

(Whereupon, at 4 p. m., the subcommittee recessed.)

CIVIL RIGHTS—1957

MONDAY, FEBRUARY 18, 1957

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

The subcommittee met, pursuant to recess, at 4:05 p. m., in the caucus room, 318 Senate Office Building, Senator Joseph C. O'Mahoney, presiding.

Present: Senators O'Mahoney, Johnston, and Ervin.

Also present: Charles H. Slayman, Jr., chief counsel, Constitutional Rights Subcommittee; and Robert Young, staff member, Committee on the Judiciary.

Senator O'MAHONEY. The Subcommittee on Constitutional Rights is now in session.

We have the honor of receiving the testimony of Senator Goldwater of Arizona on an amendment which he proposes to add to the bill.

Have you a copy of the amendment?

Senator GOLDWATER. Yes, I have, Mr. Chairman.

Senator O'MAHONEY. Let that be the first item in the record.

(Amendment to S. 83 follows:)

[S. 83, 85th Cong., 1st sess.]

AMENDMENT Intended to be proposed by Mr. GOLDWATER to the bill (S. 83) to provide means of further securing and protecting the civil rights of persons within the jurisdiction of the United States, viz: On page 11 strike out lines 3 through 8 and insert the following:

(1) investigate written allegations that certain citizens of the United States are being deprived of their rights to vote or obtain employment, or are being subjected to unwarranted economic pressures, by reasons of their color, race, religion, national origin, or membership or nonmembership in a labor or trade organization;

Senator O'MAHONEY. You may proceed.

STATEMENT OF HON. BARRY M. GOLDWATER, UNITED STATES SENATOR FROM THE STATE OF ARIZONA, ACCOMPANIED BY DEAN BURCH, LEGAL ASSISTANT TO SENATOR GOLDWATER

Senator GOLDWATER. Thank you, Mr. Chairman.

I want to thank you and the committee for the opportunity of appearing here today to discuss my proposed amendment to S. 83.

Mr. Chairman, before I start, I would like to introduce my legal assistant, Mr. Burch, who will sit here if it is permissible during my testimony.

Senator O'MAHONEY. Quite acceptable.

Senator GOLDWATER. Thank you.

Mr. Chairman, I have been following the testimony on this so-called civil rights bill ever since it started, and so far it has developed pretty much into an argument on the right to vote.

I want to make it perfectly clear that I am perfectly in accord with the establishment of a person's right to vote.

If it is going to be merely a bill to do that, however, then I suggest that we call it that and quit hiding it under the pretext of a civil rights bill. However, Mr. Chairman, the title of this bill, and I read from S. 83, is "to provide means of further securing and protecting the civil rights of persons within the jurisdiction of the United States," so I think that the intent of S. 83 is to include everything that comes under the purview of civil rights, and I suggest, Mr. Chairman, that before this bill reaches the final vote on the floor of the Senate or the floor of the House, that there will undoubtedly be many other amendments than mine offered to it, amendments that will broaden the entire base of civil rights.

Mr. Chairman, there has been some question as to the germaneness of my amendment, inasmuch as it is called the right-to-work amendment.

I might call the attention of the committee to section 104, paragraph 1, which my amendment intends to replace, and in that, and I read from it—

or are being subjected to unwarranted economic pressures, by reasons of their sex, color, race, religion, national origin.

Now the very inclusion of the language "unwarranted economic pressures" seems to me to make the right-to-work amendment that I have offered extremely germane.

Mr. Chairman, I think at this point a rather general and broad discussion of rights becomes necessary, but before that, I want to refer to some of my remarks that I made on the floor of the Senate when I introduced this amendment.

Senator O'MAHONEY. Let me make clear for the record what your proposed amendment does.

S. 83 is a bill introduced on the 7th of January by a number of Senators, and it has been represented I think correctly as having been recommended by the Department of Justice.

Am I right in that?

Senator GOLDWATER. I believe you are right, sir.

Senator O'MAHONEY. Under section 104 on page 11, which begins the description of the duties of the Commission, we find the paragraph embracing lines 3 to 8 which read as follows:

Investigate allegations in writing that certain citizens of the United States are being deprived of their right to vote or that certain persons in the United Sates are voting illegally or are being subjected to unwarranted economic pressures by reason of their sex, color, race, or national origin.

Your amendment strikes out these eight lines?

Senator GOLDWATER. Yes, sir.

Senator O'MAHONEY. And substitutes in lieu thereof the following six lines:

(1) investigate written allegations that certain citizens of the United States are being deprived of their rights to vote or obtain employment, or are being subjected to unwarranted economic pressures, by reasons of their color, race, religion, national origin, or membership or nonmembership in a labor or trade organization—

and then subparagraphs (2) and (3) of section 104 of the bill as written are not affected by this amendment of yours?

Senator GOLDWATER. That is the amendment, yes, Mr. Chairman.

Senator O'MAHONEY. Thank you, Senator.

You now may explain your amendment.

Senator GOLDWATER. Mr. Chairman, S. 83 is a bill introduced into the Senate by a large group of outstanding Senators.

It has as its purpose the definition of protection of civil rights. I am heartily in accord with this legislation and I have asked and have been included as a cosponsor of the bill so that I may better aid in its passage. But the framers of this bill have forgotten one of the most precious of all rights, namely, the right to work.

S. 83 proposes that the national policy protect the right of the individual to be free from discrimination on account of race, color, religion, or national origin.

It should have included the protection of the individual from discrimination on account of belonging or not belonging to a labor organization.

I would like to remind the committee that after the Constitution was written those wise men who had labored on that document decided that even though the source of our concepts of freedom is God, the day might come when those rights, even though inherent, might be encroached upon if they were not spelled out.

The result of this fear was the Bill of Rights—the first 10 amendments to the Constitution in which many of our rights are carefully outlined.

In fact, Mr. Chairman, this is an interesting point. The ninth amendment, which I think we can call the forgotten amendment, even went so far as to say this:

> The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

I think it is proper, Mr. Chairman, that we discuss briefly the concept of our rights in this country, because just as our Founding Fathers feared, we have reached a point in our history where people are looking on rights in a different light than they did back in the days of the writing of the Constitution.

Many of our rights that were envisioned under the Constitution have been moved from the State to the Federal Government, many rights that were recognized as inherent by the ninth amendment have been, in my mind, taken away from the people.

Mr. Chairman and members of the committee, the Declaration of Independence says that—

> We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable rights, and that among these are life, liberty, and the pursuit of happiness.

That is not only the cornerstone of our Republic, an expression recognizing the source of our freedom as stemming from God. It also spells out our fundamental rights.

The right to work is one of our rights. It is fundamental, for without it a man can't retain the right of liberty or the right to pursue happiness or the right of life itself, for all are dependent on his right to work.

Shakespeare was certainly no expert in this field, but he wrote something in the Merchant of Venice that I think applies very aptly. He said—and I quote him:

> You take my house when you do take the prop that doth sustain my house. You take my life when you do take the means whereby I live.

That is the end of the quote from Mr. Shakespeare.

Now, why is this important to remember?

Mr. Chairman and committee, our whole freedom, our whole concept of freedom, is based on the freedom of the individual.

I think it was best expressed by the author of a book entitled "The Forgotten Ninth Amendment," Mr. Bennett Patterson, and I would like to quote him:

> Individual freedom and the recognition and development of the spiritual nature of mankind are the essence of democracy. Indeed they are the essence of life itself. We believe that by nurturing and encouraging the natural development that he will achieve his greatest work, society as a whole will profit in the greatest measure.

Our whole system is based on individual rights and freedoms. When a man has to belong to a union in order to obtain or retain work, then that man does not have the right to work under our concept of rights.

The Constitution in several places touches I believe on this question.

The famous fifth amendment says in part:

> Nor be deprived of life, liberty, or property without the due processes of law.

When we have compulsory union membership, as we have in effect in all but 17 States of this Union, I feel that certainly a man's property is being taken away from him when he is denied employment because of membership in a union, or when he is denied employment for nonmembership in a union just as much as if we walked in and took his life savings or his furniture or other properties away from him.

When we say to a man that "You cannot work" because of any discriminatory reason, then we in effect are violating the concepts and ideals of part of the fifth amendment.

Then we go on to the 14th amendment which says:

> Nor shall any State deprive any person of life, liberty, or property without the due process of law—

and my same arguments that apply to the fifth amendment that the intent of the Constitution was to protect any right, any right at all, bearing upon life, liberty, and property, and the right to work is fundamental to all of these rights.

If a man is denied work either by nonmembership or a membership in a union, then he is deprived of these rights without due process of law.

I referred once to the ninth amendment. I might remind the committee that after these wise men who wrote our Constitution enumerated what they thought to be the rights that needed enumeration, they caught everything else in the ninth amendment by saying:

> The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people.

We did not write out that a man has the right to get up or the right to sleep or the right to wake up or the right to eat.

We assumed that they were the inherent rights from God, just as the people at the time the Constitution was written said "Why worry about these rights? They came from God. Everybody knows what an inherent right is. Everybody knows what a man has to do as a free child of God."

So we did not put in the right to work in so much language. But all of these rights of men are protected by our Constitution. It is the individual and not the State or the Federal Government which is the source and basis of our entire social component, and because of this, because of the fact that sovereignty rests with the individual, I feel that the Constitution has a very strong argument for recognizing the right of a man to obtain employment without belonging to an organization or being denied because he does belong to an organization.

There is one more part of the Constitution that I would like to touch on. I feel personally in many years of experience with this right-to-work concept that this is probably the basis, the best basis on which to argue this concept.

That is contained in the first amendment which relates to the freedom of association. The first amendment says in part:

> Or the right of the people peacefully to assemble.

This freedom springs from the liberty of the individual to order his life as he sees fit, to choose where he will work, to choose his church, his political party, his lodge, his union if he desires to affiliate with any of these.

No law should compel him to join nor condemn him for joining.

Some men want to belong to unions, some do not. It is just as simple as that. But some union leaders want the right of assembly destroyed by the extension of compulsory unionism into the States where that right is now protected.

We can see, Mr. Chairman and members of the subcommittee, that the Constitution is clear in its intent to protect all of our inherent rights, and the right to work is one of these.

It is not spelled out in the Constitution, as I have discussed before. These rights are all God-given and they are inherent rights, and the right to live is one of them.

I merely remind you of the words of the Declaration, which I won't repeat here, which bears out the fundamental concept of all of our liberties. This right to live is so basic as to create no argument.

But how can the right to live be exercised when the right to work is tampered with?

Here is what the Supreme Court said in *Butchers Union* v. *Crescent City Co.* (Illinois, U. S. 746, 762), and I quote:

> The right to follow any of the common occupations of life is an inalienable right * * * To deny it * * * is what no legislature has a right to do; and no contract to that end can be binding on subsequent legislatures.

That was the Supreme Court speaking.

Now I would like to take a look at what one of the great liberals of our time had to say about this. I refer to the late Franklin D. Roosevelt, President of the United States, and I quote from something he said:

> I tell you frankly that the Government of the United States will not order nor will Congress pass legislation ordering a so-called closed shop.

It is true that by agreement in many plants of various industries the closed shop is now in operation. This is a result of the legal collective bargaining and not of Government compulsion on employers or employees.

It is also true that 95 percent or more of the employees in these particular mines belong to the United Mineworkers Union. The Government will never compel this 5 percent to join the union by Government decree. That would be too much like the Hitler methods toward labor.

Now let's move up to modern times.

Let's hear what one of the most distinguished of our modern-day liberals said about this subject on January 9 of this year. I refer to the junior Senator from Minnesota, Hubert Humphrey, whose enthusiasm for the enactment of a proper civil rights measure will be a credit to him throughout his life.

Here is what he said—I think I will read all of this because it touches on some of the other rights which I feel will certainly be included or attempts will be made to include them before the bill reaches the voting stage.

I quote from Senator Humphrey:

By civil rights we mean the personal, political, and economic rights and privileges guaranteed under the Constitution and the law, and implicit in the democratic way of life, rights, and privileges which are morally the heritage of every human being, regardless of his membership in any ethnic group.

To be specific, I believe these rights include the right to work, the right to education, the right to housing, the right to the use of public accommodations, or health and welfare services and facilities, and the right to life in peace and dignity without discrimination, segregation, or distinction based on race, religion, color, ancestry, national origin or place of birth. There are the rights and privileges without which no individual can participate freely or completely in our democratic society.

These are the rights which government has the duty to defend and expand.

It would be easy for me to quote from people who are historically in favor of the right-to-work movement, but I like to select people who have some reason for being against 14 (b) of the Taft-Hartley Act, have some reason for not agreeing with those of us who believe in the right to work.

I have a few here that I would like to read quickly: Warren Stone, past grand chief engineer of the Brotherhood of Locomotive Engineers, said in Law and Labor (p. 250 (1922)):

I do not believe in forcing a man to join a union. If he wants to join, all right; but it is contrary to the principles of free government and the Constitution of the United States to try to make him join.

We of the engineers work willingly side by side with other engineers every day who do not belong to our union, though they enjoy without any objection on our part the advantages we have obtained. Some of them we would not have in the unions. Others we cannot get.

Mrs. Franklin D. Roosevelt, who has been extremely outspoken—and I admire her for it—in her effort to obtain the proper recognition of civil rights, wrote in her column My Day, on March 13, 1941, an article entitled "We Should Attack Union Abuses, Not Ideals," and I quote here:

I do not believe that every man and woman should be forced to join a union. I do believe the right to explain the principles lying in back of labor unions should be safeguarded, that every workman should be free to listen to the plea of organization without fear of hindrance or of evil circumstances, and that he should have the right to join with his fellows in a union if he feels it will help others and incidentally himself.

President Eliot of Harvard University, said about this in a speech at Cambridge on Industrial Condition of Public Happiness, as reported in the Journal of Commerce, May 6, 1904:

> The surrender of personal freedom to an association is almost as great an obstacle to happiness as its loss to a despot or to a ruling class, especially if membership in the association is compelled and the association touches livelihood.

Then, Mr. Chairman and committee, I call your attention to something that Donald R. Richberg said on this subject in Free Men versus the Union Closed Shop, in the Freeman, July 16, 1954, and I quote him:

> The entire value of labor organization to the workers lies in this power of the workers to control their representatives. The basis of that control and the only assurance that it will continue is found in the right to freedom of the individual worker to refuse to support an organization or a representative whose judgment or goodwill he does not trust. But how can a man trust his servant who assumes to be his master and says, "You must obey me or I will cut your throat."

I would like to read just a few statements from the Supreme Court on this important subject.

I quote from the Court in *Truax* v. *Raich* (33, 239 U. S. 41):

> It requires no argument to show that the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the amendment to secure.

And again in *Meyner* v. *Nebraska* (262 U. S. 390, 399):

> While this Court has not attempted to define in exactness the liberty thus guaranteed, the term has received much consideration and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by freemen.

Mr. Chairman, there is much agreement that among our civil rights is the right to work. Frankly, I believe it to be, I go so far as to say, our most cherished and one of our most easily recognizable inherent rights, this civil right that I feel is a right to work. I am not alone in that. I have quoted people who definitely would never agree with me in my rather conservative approach to the problems of our Government. I have quoted people who I have disagreed with and who have disagreed with me, as I have said.

Senator O'MAHONEY. Senator, I wonder if you could put the dates in the record when the quotations which you have quoted were made so that they can be judged in the light of the conditions that existed at that time?

Senator GOLDWATER. I will be very happy to. I won't be able to do them all at this moment.

Senator O'MAHONEY. Oh, no.

Senator GOLDWATER. But we can certainly supply them for the record. I have them in my files.

Senator O'MAHONEY. You quoted from the Supreme Court?

Senator GOLDWATER. Yes, sir; and we will get the exact dates and cases involved in that. I merely have the citations.

Senator O'MAHONEY. If you will.

Senator GOLDWATER. Not being a lawyer, I don't know exactly how to go about doing those things.

Senator O'MAHONEY. So that you may understand why I have asked——

Senator GOLDWATER. I understand perfectly, and I agree with you and I apologize for not having had them. They will certainly be supplied for the transcript.

I would like to quote further, if the committee will bear with me one moment, from an editorial in the Los Angeles Times of Sunday morning, September 4, 1955, a portion of a speech by Lord Justice Denning, who is the Lord Justice of Appeal, a distinguished British jurist.

He said, and I quote in part:

A man's right to work is just as important to him, indeed more important, than his right of property. If his rights of property are invaded, the courts have well-known causes of action to protect him; his house, his furniture, and his investments are all well safeguarded by law.

But his right to work is left open to marauders. If he is wrongly deprived of his right to work, the court should intervene to protect him. They should also protect him against wrongful exclusion by his union.

I submit that for the record.

(The document referred to is as follows:)

[Los Angeles Times, September 4, 1955]

LABOR DAY AND THE RIGHT TO WORK

Tomorrow, the first Monday of September, is Labor Day, a holiday universally observed throughout the United States and possessions. It is so by the action of the legislatures of the various States; Congress declares only for the District of Columbia and for Federal employees. The universality is a result of the universal respect held in this country for the dignity of labor.

UNIVERSAL RESPECT

It is not, an dnever has been, the general belief in this country (as it has in some others) that it is honorable to live without working; to draw sustenance from the product of the Nation without contributing to it is properly felt to be wrong. This is not a legal but a moral compulsion.

And if a man should work if he is able, so he should have the right to work at any task he can find for which he is qualified, without any artificial discrimination. In this connection, the speech of a distinguished British jurist at the recent convention of the American Bar Association was very much to the point. He is Lord Justice Denning, Lord Justice of Appeal. His general subject was freedom as protected by law. In the course of the address he said:

"When a man joins a trade union he is bound by the rules. They are said to be a contract between the men themselves and between them and the union. But they are in no sense a contract freely negotiated. A man must accept them or go without employment * * * If the union or its officers break the rules, the man can get redress to some extent in the courts of law, but so long as the union and its officers keep within the law he has no redress.

LAW FALLS SHORT

"I suggest that where the law falls short is that it puts too much emphasis on the supposed contract between the man and his union and too little emphasis on his right to work.

"A man's right to work is just as important to him, indeed, more important, than his right of property. If his rights of property are invaded, the courts have well-known causes of action to protect him. His house, his furniture, and his investments are well safeguarded by law.

"But his right to work is left open to marauders. If he is wrongfully deprived of his right to work, the courts should intervene to protect him. They should also protect him against wrongful exclusion by his union.

"I pause to say that a welcome change is taking place in the attitude of trade unions to this problem. Quite recently the chairman of the Trade Union Congress, Mr. Charles Geddes, strongly criticized the closed-shop principle.

"'I do not believe the trade-union movement of Great Britain can live for very much longer on the basis of compulsion,' he said. 'Must people belong to us or starve, whether they like our policies or not? Is that to be the future of the movement? No. I believe the trade-union card is an honor to be conferred, not a badge which signifies that you have got to do something whether you like it or not.

"'We want the right to exclude people from our union, if necessary, and we cannot do that on a basis of belong or starve.'"

The attitude of American trade-union leaders is the opposite of thise and we believe it is a short-sighted attiude. Despite the prohibition of the closed shop in the Taft-Hartley Act, some union continue to insist upon it, and everywhere they insist that the union shop is necessary to protect union security, and to prevent the gains won by the union from being gathered by "free loaders."

SECURITY FOR LEADERS

Whatver force there may be in such an argument, it must yield, we believe, to the fact that this union security is actually security for union officers and the equivalent of serfdom for rank-and-file members.

Unless a man can quit his union when its policies do not suit him, he has no protection against tyranny.

When there is no closed or union shop, and where men may freely join or freely leave the organization, the officers must win them by being of benefit to them. The advantages of compulsion accrue only to the officers.

That the trade-union movement has brought improvement in the status of labor, few people doubt. But if the trade union cannot sell itself on its merits, it hardly deserves to succeed on any other basis.

Labor Day is a day for all working people. There are currently some 65 million such people in the United States, all engaged in useful, or at least gainful, occupations. As Lord Justice Denning said, the right to work is even more important than the right to hold property, and the law is defective if it fails to maintain such a right.

Senator GOLDWATER. Mr. Chairman and members of the committee, a distinguished British jurist has recognized a weakness in the American system of laws. I would lik to relate just one incident that I think bears on this, and certainly will give people who criticize my amendment some cause for thought.

Recently in Milwaukee two Negroes were denied by the court the right to belong to the bricklayers union because they are Negroes. Now if that can be done in this country, then certainly those people who champion civil rights and civil liberties should be interested in some legislation that can correct that evil.

I understand that there are provisions in other union constitutions and bylaws to that effect. I am not prepared to state them. I merely state it as hearsay, but I believe that the same can be proven.

That, Mr. Chairman, is all that I have to say on the subject. If any of you gentlemen have questions, I will be glad to answer them.

Senator O'MAHONEY. May I ask you, Senator, on the basis of the fact that many persons have criticized the so-called right-to-work laws as legislative boons intended to kill the labor movement, whether or not you have any such thought of such an effect following this amendment?

Senator GOLDWATER. No, sir; I will make this statement.

I will never be part or parcel to any legislation that is directed at destroying the union movement in this country.

I think it has done a great deal for the country. But I think the time has come when we recognize that written into the Federal laws

of this Nation of ours, and I refer to compulsory unionism, is a breach of our concept of freedoms, and to that end I shall work diligently and constantly, as I have for the last 12 years, in the interest of right-to-work legislation.

I do not, by the way, look on this amendment as constituting a national right-to-work law. I can divorce this approach from the approach contained in section 14 (b) of the Taft-Hartley Act.

Senator O'MAHONEY. Let me ask you to look at this first line of your amendment "investigate written allegations that certain citizens" and so on.

I assume that the use of the word "written" was to exclude any oral allegations?

Senator GOLDWATER. No, sir. I wanted to keep this amendment consonant with the entire approach of the Attorney General, and he has in his section 104, paragraph 1, has specified in writing. I merely included that in mine.

Senator O'MAHONEY. You feel that an allegation should be made in writing?

Do you think that they should be made under oath and corroborated, as is the case in other charges of violations of law.

Senator GOLDWATER. I would have no objection to that being done. I believe that that is contemplated in this S. 83, and I do not want to change the approach at all.

In other words, if a man is denied employment because of membership or nonmembership in a union he has the right to come before the proper body, after submitting his complaint in writing, and make his protest.

Senator O'MAHONEY. I ask these few questions because of the fact that there are certain basic circumstances under which all legislation must be considered nowadays, particularly, No. 1, the financial status of the Government. The creation of new bureaus and new Government agencies to perform the tasks of Government inevitably increase the expense of Government.

Have you borne that in mind in this suggestion to create a commission to undertake duties which can be performed by the Department of Justice as it now is?

Senator GOLDWATER. Yes, sir; I have, and let me say this: that if mine were an amendment to the bill I would have waited until such time as the Taft-Hartley Act were considered and get this problem through the Taft-Hartley Act in amendments to that.

Senator O'MAHONEY. In other words, you feel that it is more relevant to the labor law than it is to this?

Senator GOLDWATER. No, sir; I do not, but I did not finish my statement.

Senator O'MAHONEY. I am sorry.

Senator GOLDWATER. My basic feeling in this whole field of civil rights—and I have expressed this to my people at home and to interested people here in Washington—is that it is a problem of the States.

But inasmuch as the Federal Government and my administration, of which I am a member, has caused legislation to be introduced on this subject, I feel so deeply about it that I saw fit to go along with it, and I am introducing my amendment in consonance with the recommendations of the legislation.

Senator O'MAHONEY. Do you oppose the Taft-Hartley law?

Senator GOLDWATER. No; I think it is a good law.

I think it could be changed here and there. I don't think it is going to be, but that is beside the point.

Senator O'MAHONEY. In other words, you have no objection to collective bargaining?

Senator GOLDWATER. No.

Senator O'MAHONEY. As such?

Senator GOLDWATER. No, not at all.

Senator O'MAHONEY. You recognize, I suppose, that there has been a pretty steady concentration of economic power in the hands of large corporations in which the employer and the employee never have a chance to meet to negotiate working conditions and wages and the like.

Senator GOLDWATER. I think that is inherent in any society that recognizes the right of men to organize into labor unions and pursue collective bargaining.

I would say that that would be true whether the organization had 100 employees or 12 or 15,000 employees.

That is the reason that a man should want to join a labor union, so that he could be represented at the bargaining table and not have to go there himself.

My basic feeling is that a man should not be required to do it for I feel that is a violation of a civil right. These inherent rights include the right of a man to join or not to join as he sees fit, for any reason that he may want to give.

Senator O'MAHONEY. Thank you very much, Senator Goldwater. I appreciate your testimony.

I have no further questions to ask.

Senator Ervin?

Senator ERVIN. As I understand it your reason for proposing this at this time is that you consider that the right of persons to follow the ordinary occupations of life is a civil right, and that if the Congress is going to set up a commission, a bipartisan commission, to study civil rights, it ought to study all civil rights of all Americans and not confine the study to just one particular group of Americans or several groups?

Senator GOLDWATER. You have expressed it far better than I can, Senator Ervin.

Senator ERVIN. That is all.

Senator GOLDWATER. Thank you very much, Mr. Chairman.

Senator O'MAHONEY. You have no further testimony to give?

Senator GOLDWATER. No, sir; I have no more.

Thank you very much.

Senator O'MAHONEY. The committee will now stand in recess until 10 o'clock tomorrow morning.

(Whereupon, at 4:35 p. m., the committee was recessed, to reconvene at 10 a. m., Tuesday, February 19, 1957.)

CIVIL RIGHTS—1957

TUESDAY, FEBRUARY 19, 1957

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

The subcommittee met, pursuant to recess, at 10:10 a. m., in room 318, Senate Office Building, Senator Arthur V. Watkins presiding.

Present: Senators Watkins, Ervin, and Johnston.

Also present: Charles H. Slayman, Jr., chief counsel, Constitutional Rights Subcommittee, and Robert Young, staff member, Committee on the Judiciary.

Senator WATKINS. The subcommittee will be in session.

The first witness will be Mr. Roy Wilkins.

Mr. Wilkins, please give us your address and your position in the organization you represent.

STATEMENT OF ROY WILKINS, EXECUTIVE SECRETARY, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE; ACCOMPANIED BY CLARENCE MITCHELL, DIRECTOR, WASHINGTON BUREAU, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

Mr. WILKINS. Mr. Chairman, my name is Roy Wilkins. I am the executive secretary of the National Association for the Advancement of Colored People, New York City.

I wish to express appreciation to the subcommittee, Mr. Chairman, for the opportunity to testify not only in behalf of my own organization but for 25 other national organizations who have endorsed this statement.

These organizations are: American Civil Liberties Union; American Council on Human Rights; American Ethical Union, National Committee on Public Affairs, American Jewish Congress; Americans for Democratic Action; American Veterans Committee; Friends Committee on National Legislation; Hotel and Restaurant Employees and Bartenders International Union, New York Joint Board; Improved Benevolent and Protective Order of Elks of the World; International Union of Electrical, Radio and Machine Workers, AFL–CIO; Japanese-American Citizens League; Jewish Labor Committee; Jewish War Veterans of the USA; National Alliance of Postal Employees; National Association for the Advancement of Colored People; National Community Relations Advisory Council; National Council of Negro Women; Unitarian Fellowship for So-

cial Justice; United Automobile Workers of America, AFL-CIO; United Hatter, Cap, and Millinery Workers International Union; United Hebrew Trades; United Steelworkers of America; Women's International League for Peace and Freedom; Workers Defense League, and the Workmen's Circle.

As I say, Mr. Chairman, all of these organizations have endorsed the statement which I now make.

Ten years ago a committee of distinguished citizens from all walks of life, appointed for the purpose by the President of the United States, made a searching study of the state of civil rights in this country and issued a report entitled "To Secure These Rights." Few Government reports have been so widely publicized and so warmily acclaimed. During the intervening decade a number of the recommendations contained in that report have been carried out.

For example, largely by Executive action, segregation has been eliminated from the armed services; discriminatory treatment has been outlawed in the Federal establishment; and a special watchdog committee oversees the no-discrimination provisions of Government contracts. Racial segregation and discrimination are no longer lawful in the Nation's capital.

In a number of States and municipalities, laws and ordinances have been enacted as recommended in the report outlawing discrimination in employment, in housing, in public accommodations, and in the National Guard; special commissions have been set up to promote fair and equal treatment and to facilitate adjustments.

But although the committee recommended some thirty-odd measures for congressional action, and although the report asserted that the time for such action was "now"—that is 1947—not a single one of these recommendations has ever been brought to a vote in both Houses of the Congress.

The story of these past 10 years in civil rights was a repetition of what it had been for a much longer period before. The fact is that there has been no Federal legislation for civil rights in over 80 years.

The organizations which I represent have endorsed the recommendations of the President's Committee on Civil Rights. It is our conviction that those recommendations represent real needs and that all of them are long overdue. But we recognize that, however much we might want it, every one of these needs cannot be satisfied at one time. Our immediate and overriding interest, therefore, is in making a start, in taking a first step toward breaking the congressional stalemate through the enactment of a minimum meaningful bill.

In the last session of the Congress, such a bill, H. R. 627, was passed by a strong bipartisan majority in the House of Representatives. Similar legislation was approved by this subcommittee, after careful hearings. Action was never completed by the full Senate Judiciary Committee and no such legislation ever reached the Senate floor.

The legislation which passed the House created no new civil right. However, it did provide civil remedies against interference with the right to vote and it permitted the Justice Department to initiate civil suits in behalf of persons deprived of their civil rights. It also provided for a special Civil Rights Division in the Department of Justice and for the establishment of a bipartisan commission to investigate violations of civil rights.

Official Absentee Ballot, General Election, November 6, 1956

JEFFERSON COUNTY

Names of Offices to Be Voted For	DEMOCRATIC PARTY	REPUBLICAN PARTY	INDEPENDENT	
	○	○	○	○
For Associate Justice of Supreme Court—Place No. 1 (Vote for One)	( ) DAVIS F. STAKELY	( )	( )	( )
For Associate Justice of Supreme Court—Place No. 2 (Vote for One)	( ) JAMES S. COLEMAN, JR.	( )	( )	( )
For Judge of the Court of Appeals—Place No. 3 (Vote for One)	( ) AUBREY M. CATES, JR.	( )	( )	( )
For President Alabama Public Service Commission (Vote for One)	( ) C. C. (JACK) OWEN	( )	( )	( )
For Presidential Electors (Vote for Eleven)	( ) Wesley Winchell Acee, Jr.	( ) WILLIAM H. ALLBRITTON	( ) THOMAS BELLSNYDER, JR.	( )
	( ) J. E. BRANTLEY	( ) R. S. CARTLEDGE	( ) RUSSELL CARTER	( )
	( ) JESSE BROWN	( ) Charles H. Chapman, Jr.	( ) John Frederick Duggar, III	( )
	( ) WILMA K. BUTTS	( ) HERMAN E. DEAN, JR.	( ) LLEWELLYN DUGGAR	( )
	( ) H. TOM COCHRAN	( ) ROBERT M. GUTHRIE	( ) JOHN C. EAGERTON, III	( )
	( ) WILLIAM M. KELLY, JR.	( ) THOMAS G. McNARON	( ) M. L. GRIFFIN	( )
	( ) LAWRENCE E. McNEIL	( ) NEIL MORGAN	( ) TOM C. KING	( )
	( ) BEN F. RAY	( ) W. M. RUSSELL	( ) JOSEPH S. MEAD	( )
	( ) H. FLOYD SHERROD	( ) I. L. SMITH, JR.	( ) EDWIN T. PARKER	( )
	( ) HENRY W. SWEET	( ) GEORGE STIEFELMEYER	( ) J. S. PAYNE	( )
	( ) W. F. TURNER	( ) GEORGE WITCHER	( ) JACK S. RILEY	( )
For United States Senator (Vote for One)	( ) LISTER HILL	( )	( )	( )
For Representative in the 85th Congress From the 9th District (Vote for One)	( ) GEORGE HUDDLESTON, JR.	( ) W. L. LONGSHORE, JR.	( )	( )
For Circuit Judge From the 10th Judicial Circuit—Place No. 1 (Vote for One)	( ) ROBERT C. GILES	( )	( )	( )
For Circuit Judge From the 10th Judicial Circuit—Place No. 8 (Vote for One)	( ) HAROLD M. COOK	( )	( )	( )
For Probate Judge (Vote for One)	( ) J. PAUL MEEKS	( ) SAM L. MASON	( )	( )
For County Treasurer (Vote for One)	( ) JOE L. KIRBY	( ) JOSEPH W. RAINES	( )	( )
For Members of Board of Education (Vote for Two)	( ) W. A. BERRY	( ) GORDON BEENE	( )	( )
	( ) O. G. GRESHAM	( ) ANNE B. HELMS	( )	( )
For Judge of Municipal Court of Ensley (Vote for One)	( ) J. ELLIS BROWN	( )	( )	( )
For Constable, Precinct 9 (Vote for One)	( ) FRANK L. EDDENS	( )	( )	( )
For Constable, Precinct 10 (Vote for One)	( ) W. S. JOHNSON	( )	( )	( )
For Justice of the Peace, Precinct 11 (Vote for Two)	( ) MRS. HATTYE ROGERS	( )	( )	( )
	( ) A. C. SPRINGFIELD	( )	( )	( )
For Constable, Precinct 11 (Vote for One)	( ) A. FRANK KIRKLAND	( )	( )	( )
For Justice of the Peace, Precinct 12 (Vote for One)	( ) BILL DORROUGH	( )	( )	( )
For Constable, Precinct 12 (Vote for One)	( ) ERNEST ALLMAN	( )	( )	( )
For Justice of the Peace, Precinct 13 (Vote for One)	( ) JAMES R. TODD	( )	( )	( )
For Constable, Precinct 13 (Vote for One)	( ) A. E. QUICK	( )	( )	( )
For Justice of the Peace, Precinct 15 (Vote for One)	( ) W. H. McKENZIE, SR.	( )	( )	( )
For Constable, Precinct 15 (Vote for One)	( ) SAMUEL A. HAYES	( )	( )	( )
For Justice of the Peace, Precinct 16				

For Constable, Precinct 12 (Vote for One)	( ) ERNEST ALLMAN	( )	( )	( )
For Justice of the Peace, Precinct 13 (Vote for One)	( ) JAMES R. TODD	( )	( )	( )
For Constable, Precinct 13 (Vote for One)	( ) A. E. QUICK	( )	( )	( )
For Justice of the Peace, Precinct 15 (Vote for One)	( ) W. H. McKENZIE, SR.	( )	( )	( )
For Constable, Precinct 15 (Vote for One)	( ) SAMUEL A. HAYES	( )	( )	( )
For Justice of the Peace, Precinct 16 (Vote for One)	( ) A. L. CLAYTON	( )	( )	( )
For Constable, Precinct 16 (Vote for One)	( ) ALBERT L. McANALLY	( )	( )	( )
For Justice of the Peace, Precinct 19 (Vote for One)	( ) CLAUDE H. MEARS	( )	( )	( )
For Constable, Precinct 19 (Vote for One)	( ) WARREN G. VANDERVER	( )	( )	( )
For Constable, Precinct 20 (Vote for One)	( ) JIM CRANE	( )	( )	( )
For Constable, Precinct 21 (Vote for One)	( ) H. H. (HAMP) McPHERSON	( )	( )	( )
For Justice of the Peace, Precinct 25 (Vote for One)	( ) IRVINE C. PORTER	( ) FRANK L. MASON	( )	( )
For Constable, Precinct 25 (Vote for One)	( ) W. O. HAYNES	( ) SIDNEY KEYWOOD	( )	( )
For Constable, Precinct 29 (Vote for One)	( ) A. C. CARTER	( )	( )	( )
For Constable, Precinct 33 (Vote for One)	( ) CHARLIE B. THAMES	( ) SAM MILLER	( )	( )
For Justice of the Peace, Precinct 38 (Vote for One)	( ) J. R. SCOTT	( )	( )	( )
For Constable, Precinct 38 (Vote for One)	( ) DAVID W. CARVER	( )	( )	( )
For Justice of the Peace, Precinct 39 (Vote for One)	( ) L. T. IRWIN, SR.	( )	( )	( )
For Constable, Precinct 39 (Vote for One)	( ) HERBERT H. GRAY	( )	( )	( )
For Constable, Precinct 42 (Vote for One)	( ) JACK BIDDLE	( )	( )	( )
For Constable, Precinct 44 (Vote for One)	( ) GLENN HEWETT	( )	( )	( )
For Constable, Precinct 45 (Vote for One)	( ) DAVID H. BATES, SR.	( ) ROY L. McKENZIE	( )	( )
For Constable, Precinct 50 (Vote for One)	( ) E. B. AVERHART	( )	( )	( )
For Constable, Precinct 52 (Vote for One)	( ) W. ARCHIE PHILLIPS	( )	( )	( )
For Constable, Precinct 53 (Vote for One)	( ) GEORGE BRINER	( )	( )	( )

AFFIDAVIT FOR ABSENT VOTER

STATE OF ALABAMA
JEFFERSON COUNTY

Before me, the undersigned authority, personally appeared_____, who is (made) known to me and who, being first duly sworn, deposes and says: I am a bona fide resident and qualified elector of precinct_____and district No._____in the County of Jefferson, State of Alabama. I have not voted in the election to be held on November 6, 1956, and I am entitled to vote therein. My regular business or occupation regularly requires my absence from the county of residence, and I will be absent from the county on the day of the election because of my regular business or occupation and in the performance of the duties thereof.

_____
(Signature of voter)

Sworn to and subscribed before me this_____day of October, 1956. I certify that the affiant is known (or made known) to me to be the identical party he claims to be.

_____
(Signature of Official)
Register (Title of Official)

FOR ABSENT VOTER WHO IS A MEMBER OF THE ARMED FORCES OF THE UNITED STATES

I hereby certify that the person whose signature appears above is now serving in the Armed Forces of the United States.

_____
Commanding Officer of Above Named Person

FOR ABSENT VOTER WHO IS THE WIFE OF A MEMBER OF THE ARMED FORCES

I hereby certify that the person whose signature appears above is the wife of a member of the Armed Forces and is residing with such member of t'

_____
Commanding Officer of the

FOR ABSENT VOTER WHO IS A VETERAN CONFINED TO A HOSPITAL OPERATED BY ' VETERANS' ADMINISTRATION

I hereby certify that the person whose signature appears above is a Veteran now confined to a Hospital or facility operated by the Veterar

_____
Authority in Charge

80777 O - 57 (Face p 293)

It was minimum legislation: It took no account of the problem of discrimination in employment; it made no reference to segregation in interstate transportation; it did not deal with the poll tax or with violence directed against members of the armed services or with several other pressing issues.

Nevertheless, it was a meaningful bill because it would have constituted a step forward in the safeguarding of the two most basic rights—the right to vote and the right to securiy of the person.

For example, the right to vote has been flagrantly and systematically denied colored citizens in many parts of the South. I offer the committee a sample of the kind of ballot used in last spring's Alabama elections.

You will note that the ballot carries a rooster and a declaration of white supremacy. There is a rooster and over the top of it "white supremacy for the right" and the symbol of the rooster.

I submit that it is fantastic that at the polling booths of America there can be such open flaunting of theories of racial superiority.

Moreover, the opposition to voting by colored people in Alabama is not merely symbolic. Macon County, for example, is the seat of Tuskegee Institute, a world-famous institution of higher learning.

In Macon County colored citizens have had a long, hard struggle to obtain the right to vote. The latest effort to keep many of them from casting a ballot has been most effective. State officials have simply refused to appoint a full board of registrars. At least 2 members are necessary for the board to function, and at present there is only 1.

The methods by which Negro Alabamians are discouraged from registering are illustrated by the type of questions put to them by registrars. "How many persons are on the United States Government payroll?" was one question, and "what was the 19th State admitted to the Union?" was another question asked of Negro applicants.

In Louisiana the white citizens councils have conducted a campaign to purge as many colored voters from the books as possible.

Then in the State of North Carolina I should like to point out that there are further illustrations of these questions, and in Alabama, as a consequence of not being able to vote or have any voice, we have a situation which was depicted in this magazine, Life, for December 10, 1956, which I submit for the record, indicating the kinds of pressure that are being brought on colored people who are unable to protect themselves through their ability to vote.

Senator WATKINS. That exhibit and the first one offered will be received for the record.

(The documents referred to are as follows:)

[Life magazine, December 10, 1956]

A SEQUEL TO SEGREGATION

A NEGRO FAMILY IN RURAL ALABAMA FEATURED IN LIFE'S SERIES FINDS ITSELF IN DIFFICULTIES WITH WHITE NEIGHBORS AND IS FORCED TO FIND A NEW HOME

(By Richard B. Stolley)

On September 21, 1956, subscribers and newsstand dealers in Choctaw County, Ala., received an issue of Life containing a story of special interest to them. The Restraints: Open and Hidden, the fourth installment of life's series on segregation, showed among other things how Willie and Allie Lee Causey, a Negro couple, lived and worked in the 95-percent Negro community of Shady Grove,

Ala. Choctaw County is a poor "piney woods" section of the deep South. The nearest town to Shady Grove is Silas (population 400).

The story told how Willie Causey earned a good livelihood as a woodcutter and farmer, running a small but successful business with a truck, power tools, and his own work crew. It also told how Allie Lee Causey taught school in a ramshackle building and it quoted her opinion on the Negro problem in the following words: "Integration is the only way through which Negroes will receive justice. We cannot get it as a separate people. If we can get justice on our jobs, and equal pay, then we'll be able to afford better homes and good education."

A TRIP TO THE GAS STATION

On Tuesday, September 25, 4 days after the story appeared, Willie Causey, a vigorous man of 55, rose at dawn, did some chores around the farm, and got ready for a day's woodcutting. The gas gage of his truck, a 2-ton 1954 Chevrolet in which he carried newly cut logs to the woodyard in Silas, registered almost empty. After breakfast he told his 23-year-old son, "L. C.," to drive the truck in to 1 of the 2 McPhearson service stations in Silas and get the tank filled up with gas.

At McPhearson's station L. C. parked the truck and went inside to pay the previous week's gas bill. While he was inside a white man named Hilton Roberts jumped in the truck and drove it a few hundred yards down the road, parking it in the front yard of his home. Roberts was an employee of a prosperous pulpwood dealer, E. L. ("Mike") Dempsey, who had been buying the wood that Willie Causey cut. (Willie later learned that Dempsey had ordered the truck confiscated.)

L. C. REPORTS TO HIS FATHER

Frightened and bewildered by the removal of the truck, L. C. hitched a ride back home and told his father what had happened. Willie Causey drove into Silas in his 1955 Chevrolet sedan and went to Hilton Roberts' house. The truck was still parked in the yard but there was no one home. Causey decided he had better go to see Mike Dempsey, but Dempsey was at his office 35 miles away in the upper part of the county. Needing gas for the trip, Causey drove to McPhearson's station and pulled up to the pump. The operator, Pete McIlwain, made no move toward the car for almost 10 minutes. Then at last he came over and said, "Willie, I got orders not to sell you any more gas."

"Sir?"

"I got orders to sell you no more gas, and nothing else either."

Causey thought it was a joke. He grinned and said, "Mister Pete, I been buying gas here for 15 years. What have I done that you can't sell me gas?"

"Do you take Life magazine, Willie?" McIlwain asked.

"No, sir."

"Well, you go get yourself a Life magazine and you'll know why I can't sell you gas."

No one in the Causey family had yet seen the Life story. The photographs had been taken 2 months previously, the Causeys did not know when the story would appear and they had almost forgotten about it. Mrs. Causey had heard other Negro teachers talking about the article during a teachers' meeting the day after the issue appeared, but she had not seen a copy of the magazine herself.

Puzzled, Willie Causey was getting ready to drive away from the gas station. Just then Mrs. Rosie McPhearson, the owner of this and another gas station in Silas, drove by. She saw Causey, stopped in the middle of the road, jumped out of her car and walked over. She did not speak to Causey, as she usually did, and he thought she looked very upset about something.

AN ORDER CONCERNING CAUSEY

Mrs. McPhearson, a handsome, spirited widow, whose wealth and family background have made her one of the leading figures of Choctaw County, was more than upset. She was angry. She had previously left an order concerning Causey at both her stations and was making sure now that it would be followed: "If he comes around, don't sell him another gallon of gas."

Later, explaining her attitude toward the Life story and toward Causey, Mrs. McPhearson said, "People in the North don't understand what we're up against down here. Willie said he owned all those things—why, Mr. Dempsey owned that truck."

She was also angry because her son, John McPhearson, had sold Causey a power saw on time and Willie had turned the saw in on a new one he had bought from someone else, John said, without completing the payments. "Talk about restraints," Mrs. McPhearson went on, "if he thinks he had restraints before, I'd like to know what he thinks he's got now. It's the burrheads like him that are causing us trouble. We ought to ship every one of them back to Africa. You're going to have to change the pigment of their skin * * * and until you do that none of my grandchildren are going to school with them. The people up North think they're going to cram it down our throats, but they're not."

When Mrs. McPhearson walked past him at the gas station, Willie Causey realized that whatever trouble he was in was bad trouble. He drove away and stopped at the second McPhearson station. The attendant came out and said, "Willie, I got orders not to sell you gas."

'THE AWFULEST THING'

"What's the matter?" Causey pleaded, "I been raised here in Silas and lived here all my life. What did I do?"

"That magazine," the attendant said. "That's the awfulest thing I've ever seen."

"Captain," Causey said, "I don't know what this is about any magazine. All I know is that everybody is fussing at me. You white folks are the law. Will you speak a good word for me, Captain?"

"Willie," the attendant said, "I don't know a good word to speak for you."

At this point Willie Causey was so perturbed that he gave up trying to see Dempsey and instead went directly to Shady Grove school where his wife taught. After listening to his story she told him to return to the farm and not to leave.

That week the Causeys found that no merchant they approached in Silas would sell them anything. Willie Causey slaughtered a calf and dug vegetables from the garden to provide food for his family.

Writing to her brother in Nashville about their situation, Allie Lee Causey said, "Here is a mean place, Silas. The story they did on us is true. The pictures are true, the school is true. The work is true, the home is true. But these people are very, very mad."

With his truck gone Willie Causey could not work, but his wife continued to teach, fearful each day that she would lose her job. On Friday morning, September 28, she and another teacher drove into Butler, the county seat. Both teachers wanted an advance on their salaries, which were not due to be paid until the 10th of the following month. Mrs. Causey did not want to face the superintendent of schools, Wiley C. Allen, whose permission would be required for an advance, and so the other teacher went into the courthouse alone. In a few minutes she was back. The board of education was in session in Mr. Allen's office, she reported, and they wanted to see Allie Lee Causey immediately.

Mrs. Causey spent an hour and a half being questioned by the board. How did Life find her for the story? How many people from Life came to Choctaw County? How often did they come? Where did they come from? One board member said incredulously, "The white folks around here would like to know how this all got started. We never knew any of our colored people to get in Life magazine." Mrs. Causey explained that she had not asked Life to come but that the magazine had got in touch with her family through a brother in another part of Alabama.

The board's questioning dealt with Mrs. Causey's statement on integration. Superintendent Allen read her own words to her from the magazine, then leaned back in his chair and said, "Now, Allie Lee, suppose you tell us just what you meant by those remarks."

Mrs. Causey hedged, "Those are not my exact words."

"If that's so," said Allen, "it seems to me that you have a pretty good case against Life." (This was the first of many times that a white person in Choctaw County would urge Mrs. Causey to sue.)

The board of education voiced strong objections to Mrs. Causey's advocacy of integration. As Superintendent Allen says, "We're not used to hearing the word 'integration' mentioned in this county." Last spring Mrs. Causey and the 101 other Negro teachers in Choctaw had been expressly forbidden to discuss it in their classes. But Mrs. Causey had felt free to talk to Life's reporter and photographer on the story because both of them are Negroes.

The board members had other complaints. They charged Mrs. Causey with stating that Negro teachers are paid less than white teachers when in fact their

salaries are the same if their education and experience are the same. Mrs. Causey made no such statement in the story, but the board inferred it from her general remarks about "justice" and "equal pay" for the whole Negro race.

Board member Claude G. Wimberley, a soft-spoken general-store owner in Silas, told her he was angry and disappointed because the article made it sound as if the whites had constantly harassed the Causeys. The truth was just the opposite, he said. For example, a year or so earlier Causey's logging truck had been rammed by a white man driving a pickup truck. The highway patrol said Causey's lights were defective, threatened to impound his truck and to put him in jail. Wimberley had rescued him with a $300 loan, which he said Willie had not repaid.

"I know I have helped Willie, and I know others have helped him," Wimberley told Mrs. Causey. "But that wasn't in the magazine." Other board members agreed: Willie Causey was an inveterate borrower. As Wimberley put it, "Willie's credit was regarded as good, but he was always exercising it." When the article came out "we felt as if we had been slapped in the face."

AN ILLUSORY ACQUITTAL

After the school board's cross-examination Mrs. Causey was excused from the meeting and was granted permission to draw a $260 advance on her salary. She thought she had won an acquittal. Over the weekend she tried to cheer up her husband. As long as she had a job, she said, they would get along. Things would work out.

On Monday, October 1, Mrs. Causey got a letter from Superintendent Allen. It read:

"This is to give notice to you that you are hereby suspended as a teacher in the Choctaw County school system until you can give proof to me and the members of the board of education that you did not make the statement as was quoted by you in the September 24, 1956, issue of Life magazine. Your suspension starts on October 1, 1956. (Signed) Wiley C. Allen, Superintendent of Schools."

The situation now looked bleak for the Causeys. Next morning they left home with the six children who still live them and drove to Mobile to stay with Mrs. Causey's parents. Mrs. Causey still had most of her $260 advance but she had no savings. The savings had been spent on her summer school work at Alabama State College for Negroes where she had completed work on her bachelor of science degree in elementary education. Willie Causey had earned no money for a week. Monthly payments on the car and furniture were due.

In Mobile they worried about their farm back in Choctaw County. They talked about their problem and tried to think what they could do to make peace with the white people of Choctaw County. Mrs. Causey was afraid that no matter what they did she would not get her job back. Willie Causey was afraid to ask for his truck until the white men sent for him. He paced the floor restlessly, saying, "I never been out of work this long before in my whole life." His wife wrote to a friend: "I have had a hard time all my life but I won't give up. I want to help my people, the Negroes."

After 4 days the Causeys made their decision. Leaving their children in Mobile, they would return to Silas to find out just how strong the antagonism was and to try to get support from some of their white neighbors. Mrs. Causey's family worried about the decision but the Causeys thought they could go back and assess the situation without stirring up any additional trouble.

On Sunday, October 7, Willie and Allie Lee Causey returned to Choctaw County, driving in by a back road so as to miss the town of Silas. For advice and encouragement they brought with them Mrs. Causey's 82-year-old father, Albert Thornton. He had lived in Choctaw County for many years and was remembered with fondness and respect by many white people. The Causeys hoped he would be able to plead his daughter's case.

NO HELP FROM THE BOARD PRESIDENT

The first man they went to see was J. T. Allen (a distant relative of School Superintendent Wiley Allen), owner of a general store and cotton gin in the town of Cromwell and, more important to the Causeys, president for more than 30 years of the county board of education. He is a ruddy-faced, genial man of considerable influence in Choctaw County.

J. T. Allen had not been present at the school board meeting when Mrs. Causey was questioned, but he knew what had happened and he had concurred in the suspension, though he had warned the board that Mrs. Causey could probably go

to court and win back her job. He told her all this when she and her father met him in his general store.

"I hope we can settle this peaceably," Allen said, "without a lawsuit against the board. You might get your job back here, but there isn't another county in Alabama that would hire you."

So far as Allen was concerned, the issue was settled. If she could furnish proof, such as a statement from Life that she was misquoted and misrepresented, perhaps he could call a meeting of the board, but otherwise, "I don't see what can be done."

J. T. Allen has since explained his stand on the Causey case to Life. "These southern Negroes," he says, "are different from yours up north. We think we're good to them and know how to handle them. We try to help them, look after them, see that they get enough to eat, have a job, get along all right. They don't expect equality and wouldn't know what to do if they had it. The only time we have trouble is when it's stirred up by people like the schoolteacher. There wasn't a white man in this county that approved of that story." Then, in a more jocular tone, "If you 'Yam Dankees' will leave us alone, we'll handle everything all right."

Allen believes that the white people of Choctaw County went out of their way to help Willie Causey and that he has now forfeited any right to their sympathy. "The best thing to do with this matter is not to stir it up any further," Allen says. "It's all straightened out."

After the discouraging talk with J. T. Allen the Causeys and Mr. Thornton went back to see Superintendent Allen. The superintendent criticized Mrs. Causey for her "attitude" at the earlier board meeting and again suggested that she sue Life. Mrs. Causey refused and with that refusal her teaching career in Choctaw County ended.

That same afternoon Willie Causey set out to find where he stood with the loggers of the county. About 15 years ago he had given up day-labor work and gone into the wood-producing business. He worked for pulpwood dealers and occasionally for private landowners who let him cut wood on their timber tracts for a share of the price of each cord. This share, called stumpage, usually came to about $5 a cord (not $2 a cord as Life erroneously reported). In a good week Causey could gross more than $300, and after paying stumpage, gasoline bills and crew wages he sometimes netted as much as $100.

Willie Causey's economic future depended on Mike Dempsey, whose seizure of Causey's truck had made it impossible for Willie to transport wood. A Negro friend went with Causey to Dempsey's tiny brick office on the edge of the pine forest near Cromwell. The friend went in alone and asked Dempsey to see Causey. Dempsey said he would.

As soon as Causey entered the office, Dempsey pulled out a copy of the magazine, slammed his hand against it and said, "Willie, this has got you into a lot of trouble."

Dempsey seemed to Causey angrier than he had ever seen him. He said he would get into trouble with the Federal Government over the picture in the article that showed Causey's 16-year-old son cutting wood. It is against the United States child labor law to employ a person under 18 in a hazardous industry like logging, and a pulpwood dealer caught in a violation might have his wood confiscated.

Dempsey went on, reading aloud: "He owns his own equipment for woodcutting, including power tools and a truck, and can compete successfully with white men in the same line of work." That, said Dempsey, was an outright lie. Causey owed money on the truck and the power saw and was indebted also to a garage owner in Silas and to various other white men. Dempsey said the total amount owed by Willie Causey came to nearly $800.

As Causey recalls the conversation, Dempsey went on to say, "We set you up in business, Willie. We bought you a truck and a saw, we gave you wood to cut and we paid you the same as everybody else gets. And then this comes out."

The story should have made clear, Demspey later insisted to Life representatives, that white men held mortgages on Willie Causey's equipment and that they tried to help him, not hinder him. Causey did not "own" the equipment, Dempsey claimed, even though he used it daily and kept it at his home and was making regular payments on it.

It is impossible for Willie Causey to say conclusively how much he owes and to whom. He is an unlettered man whose finances have usually been handled by his wife. While she was away at college this summer Willie allowed his affairs to be come tangled. He borrowed money and did not tell Allie Lee

until weeks later. While convalescing from an infected foot he had allowed time payments to lapse. Before Mrs. Causey had had time to straighten things out the trouble over the article began.

Dempsey accused Causey of owing him money for the truck. Causey bought the truck originally from another pulpwood dealer for whom he used to work. The dealer allowed him to use the truck and pay for it on time. Shortly after Causey began selling wood to Dempsey in 1955 the latter took over the balance due on the truck, which he says stood then at $563.50. Causey later bought some truck tires from Dempsey, increasing the amount he owed him. Causey thinks he has paid in full and more. But he says he has never received a statement on his payments. The best his wife can do is add up the amounts Dempsey deducted from Causey's checks for wood. According to her the sum is larger than all debts to Dempsey that she knows anything about. John McPhearson insists Willie still owes him for the power saw which was traded in on a new one. A lumber dealer in Silas says that he has not yet been fully paid for the lumber which Willie Causey purchased from him to build the three additional new rooms on the back of the Causey home. And a Silas garage owner, Lockwood Livingston, says Causey owes him for a motor job on his truck.

"WILLIE, YOU WERE A GOOD HAND"

As Mike Dempsey continued to criticize him, Willie Causey says he realized that he could expect no help. Twice, he says, Dempsey's anger reached such peaks that he half rose from behind his desk. Finally Willie says he told him, "Willie, you were a good hand. You put on more wood for a small crew than anybody else I had. But that magazine has knocked you right out of a job. We all came to an agreement. Nobody is going to sell you any more stumpage, and you'll never get another job from me."

At that moment Willie Causey decided that he had to move out of Choctaw County. Over and over Negro friends reported to him and his wife that white people were demanding that the Causeys get out. John McPhearson, who had sold Willie Causey the power saw, sent word through a Negro friend: Whatever you do, don't ever come back to Silas.

It had been 17 days since the article appeared. This was longer than some people expected the Causeys to say around. As Don Blount, editor of the Choctaw Advocate, told a Life editor, "When I read that in Life, I figured that man must have his bags packed." The Causeys returned to Mobile.

After making arrangements for a moving van to pick up their belongings, they went back to the farm on Friday, October 12, to pack and get ready for the movers. Mrs. Causey slaughtered her flock of 19 chickens, plucked them and stored them in the freezer. Willie Causey brought in wagonloads of corn and dug two bushels of potatoes. He puttered around three new uncompleted rooms which the family had never lived in and never would live in. The hilltop on which the house stood was unusually quiet, for the younger children had been left in Mobile. Only the mockingbirds whistled loudly and swooped low over the yard to pick up stray seeds and insects.

TROUBLE ON THE FREEZER AND FURNITURE

There was some difficulty about getting the freezer and bedroom suite out of the county. Mrs. Causey had bought them on the installment plan from G. W. Allen, a furniture and appliance dealer (and no relation to the other Allens previously mentioned), and she had not yet finished paying for them. When he heard the Causeys were planning to move, Allen sent out a truck to pick up both the freezer and the furniture. Mrs. Causey begged the truck driver not to take the freezer as this would spoil hundreds of dollars worth of beef, pork, poultry, and vegetables.

Willie Causey drove to Allen's store and asked for time to raise money and pay off the bill. Allen agreed. But Allen warned the Causeys not to move either the freeezer or the bedroom set until they had paid him in full. "You think you're in trouble now," he told them, "but if you move that furniture you'll be in the jailhouse." From friends and relatives the Causeys raised nearly $400 to take care of Allen's bill.

The Causeys had hoped to stay on the farm until the moving van arrived on Monday, but by late Saturday afternoon they were frightened by reports from neighbors that some white people were stirred up about their return and intended to come out looking for trouble. Once again the family left hurriedly for Mobile.

On Monday, Willie Causey rode out to Choctaw County in the moving van with the driver and his helper, both Negroes. On the way Causey explained what had happened to him and told the two men about the rumors. One rumor was that if they tried to move the furniture, white men would hide alongside the road and attack the truck. Arriving at the farm, the Negroes loaded the van quickly. Just as they were getting ready to leave they glanced across the road and saw three white men standing in the woods, staring silently at them. The driver put Causey in the middle of the front seat between himself and his helper, explaining, "If they get you, they'll have to get us too." All three were scared as they drove off, but the white men never moved.

Mike Dempsey, Causey's former employer, has told an editor of Life that he expected to hear talk of violence to the family, but he says that he never heard any.

Willie Causey made one more trip back to Choctaw County. He needed his truck before he could look for a new job as a woodcutter. He called Dempsey on the phone and asked if he could have it back. Yes he could, Dempsey said, if he paid off his debt. Dempsey's accountant, Melvin Pritchard, said the debt was $301.79. Willie Causey asked no questions. He told Pritchard that if he would take the truck the next day to the woodyard outside Silas, Causey's son L. C. would meet him there with the money.

"I TOLD THE TRUTH"

Pritchard never showed up. The truck was still in Hilton Roberts' front yard the following day, its back wheel securely chained. Dempsey now says that he intends to sell the truck—"legally, of course."

When Pritchard failed to deliver the truck at the appointed time, Willie Causey left Choctaw County for good.

The Causeys have now left Alabama and moved to another southern city, hoping to patch up their lives. In the weeks since Allie Lee Causey was suspended by the board of education, she has thought a lot about the things she said in Life. "I told the truth in the magazine," she says. "Justice and integration, that's what I want. Look at that picture of my school. Is that justice? A dozen of my first-graders didn't have books. Is that justice?"

In Choctaw County no colored school has indoor toilets. Only one has running water inside the building. There are only 2 lunchrooms in all 33 Negro schools.

In many other places in the South an equalization program designed to make Negro schools as good as white schools, has been in progress since the late 1940's, and especially since the 1954 Supreme Court decision against school segregation. But not in Choctaw County.

Some members of the school board acknowledge the disparity in the school systems but say they can do nothing about it. The big problem is, of course, money. Last year a $700,000 budget had to be stretched to cover the 2 school systems, and 95 percent of it, Superintendent Allen estimates, went for teachers' salaries and school buses.

"I feel we have done no wrong," Mrs. Causey wrote in a letter. "Justice is that political virtue which renders every man his due. Justice also consists of the principles of honest dealing with each other and a fixed purpose to do no one wrong or injury. I wouldn't have lost my job if justice had been in the education board."

Today all that remains of Willie and Allie Lee Causey in Choctaw County is their empty house on the hill. Its littered rooms testify to the haste in which its owners left. On the front stoop lies a discarded brown-skinned doll staring vacantly into the empty yard. The garden is untidy. Its vegetables rot in the ground. On a bare bedroom wall between two windows hangs a calendar, still turned to the month of September. No one thought to turn it to October. It is a month the Causeys hope someday to forget.

Mr. WILKINS. Mr. Chairman, in North Carolina there was reported in a newspaper, the Carolina Times, under date of May 19, 1956, a number of cases of denial of the right to vote, or complaints of such denial, from various counties in North Carolina. A typical example is a North Hampton County registrar who turned down a person because he could not tell how many rooms there were in the courthouse.

These are reports, sir, commonly circulated there.

In Bladen County Negroes were required to read the entire Constitution. In Hayesville Township in Franklin County a man was told that he could not register because he was lefthanded.

A report is given here of a student in North Carolina College who failed to satisfy the registrar on the pronunciation of the words "municipality," "deficit," and "biennial."

The North Carolina law apparently requires that you satisfy the registrar. However, it has never been defined in court as to what constitutes satisfaction, and in the case of this student, his mispronunciation, in the mind of the registrar, of these three words was sufficient to disqualify him.

In Monroe, La., representatives of the councils have actually invaded the office of the registrar of voting for the purpose of purging colored voters. The assistant attorney general in charge of the criminal division of the Department of Justice testified in October 1956, that over 3,000 voters had been illegally removed from the rolls of Ouachita Parish, in which Monroe is located.

We have had a telegram since then from an attorney in behalf of these persons saying that prior to the purge there were more than 5,000 Negroes registered in Ouachita Parish, and today their number is no more than 1,000. This is from St. Elmo Johnson, attorney at law, representing the petitioners.

Not only administrative devices, but economic reprisals and outright violence have been used to prevent colored people from voting. A dramatic illustration of how the program of fear works comes from Humphreys County in Mississippi.

Prior to May 1955, there were approximately 400 colored voters in this county. By May 7, 1955, the number of colored voters had been reduced to 92. On that day the Reverend George W. Lee, a leader in the effort to increase the number of Negroes registering and voting, was fatally shot in Belzoni, Miss. Within a few weeks, there was only one colored person eligible to vote in Belzoni, Miss. He was Gus Courts, who once ran a grocery store in the community. On November 25, 1955, he was shot and seriously wounded while in his store, and has since left the State.

I may add, Mr. Chairman, that Mr. Courts was here on Saturday prepared to testify in person on this point, was not enabled to appear and has been invited to come to the committee on a later date.

Statewide, the record shows that some 22,000 of Mississippi's 497,000 Negro eligibles were registered to vote in 1954. By primary day, 1955, the number of Negroes registered had been forced down to around 8,000.

Various devices were used in reducing this. One account comes from the Jackson, Miss. State Times, the daily paper there under the heading in March 1955 "White councils urged to prevent Negroes voting," and it gives in considerable detail the methods advised to be used to keep Negroes from registering and voting.

We have testimony here also from Prentice, Miss., from a man who says—

I am a schoolteacher in Jefferson Davis County and have served this county for 30 years as a teacher in its public schools, and for 31 years a registered voter. For 20 years I was assistant manager to the Mount Carmel voting precinct in Jefferson Davis County where there are some 125 or more registered voters. But as a consequence of a call for registration of voters in said county I was

denied the right to register in 1956, and was therefore turned down at the last general election and not permitted to vote along with some 85 others, all Negroes.

This is signed by Prof. G. D. Barnes, who asks permission to come and testify on this matter.

As I have indicated, we have been willing, in the interest of making a beginning and of breaking the legislative stalemate, to keep our demands at a minimum, though without relinquishing our principles. We are willing, that is, to accept much less at this time than we believe to be justified. I must emphasize precisely what this means. It means that we are willing to accept a minimum bill but that it must be a meaningful bill.

The test is not to be met by any bill with a civil-rights label, but only by one that deals effectively with two basic problems I have just outlined. The Department of Justice has repeatedly testified that existing statutes are inadequate to furnish protection against denials of these rights. Accordingly, any legislation which would only provide for a civil-rights division in the Justice Department, and for an investigating commission on civil rights, and does not at the same time correct the inadequacies which render such agencies impotent under existing law, would be civil-rights legislation in name only.

We favor a Civil Rights Division in the Department of Justice, and we favor a Commission on Civil Rights, as they were incorporated in H. R. 627 last year. But we regard the creation of such agencies as supplements too, not substitutes for, meaningful civil-rights legislation.

Last year was not the first time the House of Representatives had passed civil rights bills. The major problem has been in the Senate, where the rules have operated, both in committees and on the floor, to prevent or obstruct an expression of majority will.

Unfortunately, last year's House action, and the action in the Senate subcommittee, came so late in the session that it virtually guaranteed the success of the opposition's tactics. This time, your subcommittee comes to its consideration of civil rights bills sufficiently early to make their passage a possibility.

Earlier this year, efforts to modify Senate rules, so as to make it somewhat easier to bring legislation to a vote, failed by a relatively narrow margin. It was repeatedly stated at that time that a filibuster on a meaningful civil-rights bill could and would be overcome. Now is the time to demonstrate that this is indeed the case.

The organizations for whom I have the honor to speak have in the past ordinarily testified in their own names. Many others who have so testified have this time sent in written statements. We have done this not because we feel any less strongly than before but in order to do everything we can to expedite the work of this committee, to accelerate the completion of the hearings, and to bring about an early report and favorable Senate action at the earliest possible moment.

However, should the Senate hearings develop into a forum for the anti law and order forces which have filled the House record with racist poison, these organizations will renew their requests for an opportunity to appear and present testimony.

It is unfortunate that, in the interest of prompt action, proponents of law and order must remain silent while public officials from

Southern States, where democracy is often ignored both in spirit and practice, are permitted to delay committee action.

Last week before a House subcommittee—and it may be anticipated that a repetition will be staged before this subcommittee—charges were made by certain opponents of this legislation that it would set up a Gestapo in the Southern States. That the word "Gestapo" should have occurred to some of these witnesses does not appear strange when we survey certain legislation and other regulations now in force and effect in areas from which they come.

I submit for the inspection and study of the members of this subcommittee these exhibits of daily newspaper stories, one of which, from the Jackson (Miss.) Daily News of May 15, 1956, proclaims, "State To Hire Secret Racial Investigators."

This was a page 1 story, Mr. Chairman.

Another, from the Atlanta (Ga.) Journal of August 17, 1955, states that a teacher may not hold theories contrary to Georgia's traditional policy of segregated schools.

Still another, from the Jackson (Miss.) State Times of May 15, 1956, states that the new secret investigators would "interview persons involved in integration moves in the courts" and "would keep an eye on meetings of Negro groups such as the National Association for the Advancement of Colored People."

(The exhibits referred to are as follows:)

[Jackson Daily News, Jackson, Miss., May 15, 1956]

STATE TO HIRE SECRET RACIAL INVESTIGATORS—PROBERS TO AID IN FIGHT TO PRESERVE SEGREGATION; GROUP MAY INCLUDE NEGRO

(By Phil Stroupe)

The State sovereignty commission Tuesday voted to employ secret investigators as "an official arm of State government" who would "serve as the eyes and the ears" in the State's fight against racial integration.

Gov. J. P. Coleman, chairman of the 12-member group created to assure continued racial segregation, told the commission that plans approved by it today "will bring this commission into its full effect and fruition."

To carry out its work, the commission elected a full-time executive director, a director of publicity, and "such investigators as the chairman may deem necessary" to prepare the State's course of action against court suits to end segregation.

"We are not a beleaguered State with our backs to the wall," Coleman said. "I see no reason for alarm, frustration, or futility. We have got the ball and it's up to the opposition to take the initiative."

CHIEF HICKS HIRED

The commission voted to hire Chief L. C. Hicks, of highway patrol, to head the investigative force that will serve as the "intelligence corps" against the enemy camp.

"Chief Hicks is a former sheriff and if he doesn't know how to handle a job such as this there just isn't one in the State who does."

Governor Coleman was authorized, as chairman of the commission, "to employ such other investigators at salaries commensurate with their duties and responsibilities" to assist Chief Hicks. Hicks' salary would remain the same as it is with the highway patrol.

The commission elected Representative Ney Gore, of Marks, as its full-time executive director at a salary of $7,200 a year. Gore, who served as secretary of the old Legal Education Advisory Committee, would be the mainspring of the commission. "He would be the correlator of our operations," Coleman said, "with full authority to travel and represent the commission."

DECELL PUBLICITY DIRECTOR

Hal Decell, editor of the Deer Creek Pilot at Rolling Fork and publicity director for Governor Coleman in the 1955 campaign, was elected director of publicity at a maximum salary of $6,500 a year.

In addition, the commission voted to employ Mrs. Stella Parham, former LEAC stenographer, as the chief clerical assistant for the commission at $275 a month.

Attorney Hugh Clayton, of New Albany, suggested that one of the investigators to be employed by the commission "might even be a Negro."

House Speaker Walter Sillers and W. S. Henley, of Hazlehurst, constitutional law experts, suggested that the identity of the "investigators" be kept secret.

The commission authorized the field men "to spend what money is necessary to acquire the information" needed to thwart efforts of integration.

The commission was given a $250,000 appropriation by the legislature to accomplish its work.

Senator Earl Evans, Jr., of Canton, emphasized the "vital and important role of the investigators."

NEED FRIENDS

As the director of publicity, Henley said, "We need to win friends outside the South, and an expert will be required for that job."

The commission did not employ a legal adviser but all of its 12 members are lawyers and the need for legal advice can for the time being be found within its own ranks.

Governor Coleman named a three-member steering committee composed of Evans, Henley, and Attorney General Joe T. Patterson to make policy to submit to the full commission.

Other members present were: Lt. Gov. Carroll Gartin, Senator William Burgin of Columbus, Representatives Joe Hopkins of Clarksdale, W. H. Johnson of Decatur, George Payne Cossar of Charleston, and George Thornton of Kosciusko.

[Atlanta (Ga.) Journal, August 17, 1955]

TEACHERS WON'T HAVE TO SIGN ANY NEW OATH, COLLINS SAYS—CITES PLEDGE IN EVERY CONTRACT AS SAFEGUARD FOR AMERICAN IDEALS

Teachers will not have to sign any new oath in order to comply with the State board of education's most recent ruling regarding teachers' beliefs, State School Superintendent M. D. Collins says.

Dr. Collins said Wednesday that a satisfactory oath is attached to the contract that every teacher signs each year with the county that employs him. The oath is on the back of the contract form.

After signing the front, the teachers merely turns the paper over and signs the back, Dr. Collins said.

The State board of education, Monday, tabled two controversial resolutions which would have directed punitive action against teachers who favor desegregation of the school system or who were members of the National Association for the Advancement of Colored People.

Attorney General Eugene Cook told the board that present State laws and regulations could accomplish the purpose better than the resolution. The board then asked county boards of education to take over the job of seeing that teachers who favor desegregation are not permitted to work in the school system.

It instructed the county boards to get an oath from all teachers by October 15 that they will not subscribe to "any theory of government or economics or of social relations which is inconsistent with the fundamental principles of patriotism and high ideals of Americanism."

At first there was confusion as to whether a new oath would be required. Then, Wednesday, Dr. Collins called attention to the oath which is executed every time a teacher signs a contract.

On the back of the contract form, it reads in full:

"Before me, an officer duly authorized by law to administer oaths, personally appeared the undersigned, who, after being duly sworn, says that during employment as a teacher in the public schools, colleges, or universities, or in any other capacity as an employee of the State of Georgia, or any subdivision thereof, drawing a weekly, monthly, or yearly salary, deponent will uphold, support, and defend the Constitution and laws of this State and of the United States, and will

refrain from directly or indirectly subscribing to or teaching any theory of government or economics or of social relations which is inconsistent with the fundamental principles of patriotism and high ideals of Americanism."

At the bottom of the oath are blanks for the signature of the teacher, and for the seal and signature of a notary public.

The signed contract forms are kept in the office of the school superintendent of each county or independent system.

The State board has held that if a teacher signs this oath in good conscience, he cannot hold any theories of "social relations" which are contrary to Georgia's traditional policy of segregated schools.

State board member W. T. Bodenhamer, of Tift County, said Tuesday, however, that he is not sure the State board has the power to define what "social relations" in the oath means. The legislature wrote the oath in a joint resolution, passed March 26, 1935. It may be up to the legislature to say what it means by the term, the board member said.

Mr. Bodenhamer, in addition to being a member of the State board of education, is also a Tift County legislator.

In addition to the oath on the back of the contract form, Georgia teachers are also required to swear in a separate oath that they are not Communists and have no sympathy with communism. This was started under the Herman Talmadge administration.

[State Times, Jackson, Miss., May 15, 1956]

SOVEREIGNTY UNIT VOTES TO EMPLOY HICKS AS PROBER

COUNTERATTACK ON INTEGRATION

(By John Herbers, United Press staff correspondent)

The State sovereignty commission today authorized Gov. J. P. Coleman to hire secret investigators and informants to get all the facts from the enemy camp in the segregation fight.

The commission, Mississippi's official segregation "watchdog," voted to hire Highway Patrol Chief L. C. Hicks to head counterintelligence activities against forces seeking racial integration.

"Wherever there is a petition filed for integration," Coleman said, "we will want to see what the basis is to it."

The organization also would keep an eye on what Coleman called clandestine meetings of Negro groups seeking integration, such as the National Association for the Advancement of Colored People and the regional council of Negro leadership.

Hicks would send out investigators to interview persons involved in integration moves in the courts "to get all the facts for a counterattack." The commission left it up to Coleman to decide how many men to hire to help Hicks and gave him freedom to spend a reasonable amount for paid informants.

House Speaker Walter Sillers suggested that the identity of Hicks' assistants be kept secret and the commission agreed. Attorney Hugh Clayton of New Albany suggested that one of the investigators "might be a Negro."

The commission hired State Representative Ney Gore of Quitman County as its executive director at a salary of $7,200 a year and voted to offer the job as full-time publicity man to Hal DeCell of Rolling Fork, editor of the Deer Creek Pilot, at $6,500.

In Rolling Fork, DeCell said "possibilities are that I will accept" if the post is offered him, but he added he had not as yet been formally notified of his selection.

"I think the post itself could be of great service to Mississippi and I think it could also be effective in winning friends across the Nation," said DeCell.

DeCell, who is 31, served as director of publicity to Governor Coleman's gubernatorial campaign last summer.

He said his wife would take over operation of the Deer Creek Pilot should he leave his editor's post. The newspaper has received State and national journalism awards.

DeCell, a native of Vicksburg, attended the University of Alabama and the University of Mississippi, is a former commercial artist and professional musician and made three round-the-world trips during his service with the merchant marine from 1943 to 1947, including 42 months of sea duty.

Hicks would move from the highway patrol at his present salary.

The group postponed hiring a full-time attorney to map legal defense against integration efforts because the unidentified lawyer the commission had decided on, rejected the offer.

Coleman reminded the commission that the NAACP had said it would file its first suit for school integration in Mississippi in June.

When suits or petitions are filed against a school district, he said, investigators would start to work gathering information on the people involved for use in drawing up court procedures. He suggested that they also would look for any violation of new State laws like on prohibiting fomenting agitation to break down the State's laws and customs.

The publicity man would conduct an advertising and publicity campaign in the North to "give the Nation the real facts" about Mississippi. A swing in public opinion favorable to southern customs would be the long-range goal.

The commission, created by the recent session of the legislature, was given $250,000 to spend over a 2-year period as it sees fit toward maintaining segregation. It was also given broad powers to subpena witnesses and examine documents.

Coleman appointed a subcommittee composed of Attorney General Joe Patterson, Attorney W. S. Henley of Hazlehurst and Senator Earl Evans of Canton to supervise setting up the commission's working organization, which will be headed by Gore, a Marks' attorney. Gore was secretary to the old legal education advisory committee which mapped Mississippi's main defense against school integration.

Mr. WILKINS. It is here submitted, gentlemen of the subcommittee, that a Gestapo has already been set up and is in operation in certain areas. What the opponents of this legislation fear is that passage of civil-rights bills safeguarding the constitutional rights of citizens of the United States will doom their empire of thought-control and secret police.

Mr. Chairman, in support of this matter of restrictive legislation, I would like to submit for the inspection of the committee the volumes of Race Relations Law Reporter, published at Vanderbilt University in Tennessee, volume I, No. 5 for October 1956, and I cite only the headings of the legislation:

"Education, Teachers, Louisiana, Act No. 249 of the 1956 regular session of the Louisiana Legislature approved July 8, 1956 provides for additional causes for the removal of permanent teachers in the public-school system. These causes include membership in any organization prohibited from operating in the State by injunction (*Louisiana ex Rel. Le Blanc* v. *Lewis* 1 Race Rel. L. Rep. 571.)

Or, Mr. Chairman, the advocacy of the integration of the races in the public schools or institutions of higher learning.

Not only does it provide for the dismissal of school teachers, sir, but for the dismissal of school-bus operators.

In act No. 248 of the 1956 session in addition to the language above says "or the advocacy of racial integration in the public schools or institutions"——

Senator ERVIN. Pardon me, what State is that?

Mr. WILKINS. This is Louisiana, sir. This is the regular session of the Louisiana Legislature through July 8, 1956, providing "for additional causes for removal of school-bus operators" and one of those causes set forth in the title of the act is "The advocacy of racial integration in the public schools."

This is a cause for dismissal from employment as a school-bus operator.

In Mississippi in this volume here which I submit for the inspection of the committee, also published at Vanderbilt University in Tennessee, the State sovereignty commission is created; the act provides for the

creation of State sovereignty commission to take action to "protect the sovereignty of the State of Mississippi and her sister States from encroachment thereon by the Federal Government or any branch, department, or agency thereof," and goes on to provide for the investigators herein before mentioned.

Mr. Chairman, in addition to the joint statement I have submitted, I would like to submit a separate statement in behalf of the NAACP alone, a brief one.

Senator WATKINS. I wonder if you would defer that for a moment to see if there are any questions to be asked with respect to the first statement you have made.

Mr. WILKINS. They are practically part and parcel, sir.

One is a conclusion of the other but I will be very happy to do that if you like. Whatever you say, sir.

Senator WATKINS. If that is the relationship between them, you may proceed.

Mr. WILKINS. Mr. Chairman, I am making this statement separately as one from the National Association for the Advancement of Colored People alone.

The members of the NAACP and colored citizens generally were encouraged by the action of this subcommittee and that of a similar subcommittee in the House in scheduling early hearings on proposed civil-rights legislation. They inclined toward the belief that this action meant that there was a sincere desire to bring such legislation to the floor in both Houses of the Congress.

As you know, Mr. Chairman, the period from last September up until last week has been marked by almost continuous violence directed at Negro citizens and groups in the South who seek the elimination of discrimination and segregation.

There have been inflammatory speeches by persons in responsible positions of Government, local, State, and National. There have been shootings and bombings of homes and churches. There have been mobs and threats of bodily harm. There have been economic pressures. Special statutes, selective, discriminatory, and punitive in nature, have been passed by State legislatures.

In this period, Negro citizens have been outraged, but they have been patient. They have been patient because they felt that they were on the side of the law and the Constitution.

Against the great temptation to despair, and perhaps to take overt defensive action, they placed the hopes they have always held that the Congress, the Chief Executive, and the law-enforcement officers of Government would protect their rights.

They look to this Congress to protect those rights. But their first encouragement in this session has been dimmed as the days have passed and as they have witnessed the incredibly lengthy discussions of technical language which, they are told, is necessary to protect the constitutional rights of those who have made careers out of denying Negro citizens their constitutional rights.

The procedures and practices which this legislation is designed to correct have been in open operation for decades. No one, least of all an officeholder who is the beneficiary of such practices, pretends not to understand their function. No one suggests, soberly and with a straight face, that these procedures are, in the real sense, constitutional.

It is recognized that they are a device for maintaining a system. Under that system a registrar of a board of elections on the precinct level functions to restrict or deny the registration of Negro voters and, when his actions are challenged as violations of the Constitution of the United States, some of the representatives elected under that system function in faraway Washington as attorneys for the defense, secure in the knowledge that they will not be answerable to the victims at the ballot box.

Mr. Chairman, this is a vicious circle. It is more. It is an obscene comedy. Are our great traditions of freedom to be traduced in this transparent manner? Is the enduring language of our Constitution to be perverted to maintain a brazen, wicked, and provincial conspiracy? Is there no hope for frustrated and beleaguered citizens beyond the despotism of local overlords? Is there a United States of America? Does it have a Constitution and does that document have meaning for more than the cunning and the strong?

Thus far, Mr. Chairman, our people have maintained their hope in spite of specious talk, rebuffs, and violence. Under the advice of some dedicated men they have followed a nonviolent course in the face of extreme provocation. Under the advice of others, notably the NAACP, they have placed their trust in the law, the courts, in legislative bodies, and in the orderly processes of government.

What they are asking of this Congress, and what sincere men of both political parties are seeking to give them, is a minimum safeguard of the constitutional rights which have been so long denied them. But in the face of this patience, in the face of these provocations, even this minimum is being challenged.

Mr. Chairman, I cannot predict what mood will be engendered if the system which has prevailed for 80 years, should, through machinations of any sort, be perpetuated in this enlightened middle of the 20th century. I know only that it is a terrible responsibility for any man or men in high office to destroy the hope of any people that fair and orderly government will secure to them their just heritage as law-abiding citizens.

Thank you, Mr. Chairman.

Senator WATKINS. Any questions, Senator?

Senator ERVIN. You made a statement, I understand, before I came in with reference to some alleged denial of voting rights in North Carolina.

Do you have any personal knowledge of those matters, those particular instances?

Mr. WILKINS. Senator, I introduced them by saying they were published in a newspaper.

Senator ERVIN. In other words, your statement is based upon what you read in a newspaper?

Mr. WILKINS. Partly so. I understand that some of these cases, sir, have been submitted to the Department of Justice. Whether these particular ones or whether all of them were——

Senator ERVIN. Do you have any personal knowledge concerning denial of anyone's right to register and vote in the State of North Carolina?

Mr. WILKINS. I have never attempted to vote in North Carolina so I could not have any personal knowledge of it.

Senator ERVIN. Frankly I think you do some injustices to some Southern people.

Take myself, for example. I have always told election officials in my county that any man who possesses the qualifications for voting is entitled to vote regardless of race or any other consideration.

I stated the other day that I have never known of any person ever being denied the right, in my lifetime, to register and vote in my county. I realize that in a State of over 4 million people there may on occasions be some misconstruction of election laws.

Let's see exactly what your complaint is. This complaint was taken from the Carolina Times, which is published in Durham; isn't it?

Mr. MITCHELL. That is correct.

Senator ERVIN. I would like to ask you this——

Mr. WILKINS. It is published in the Carolina Times in Durham, N. C., for Saturday, May 19, 1956.

Senator ERVIN. Yes. As a matter of fact I will ask you if you do not know that the city of Durham has a very large colored population?

Mr. WILKINS. Yes; that is a matter of common knowledge.

Senator ERVIN. And I will ask you further if you don't know that thousands of them for years have been voting with the same freedom as the white people in North Carolina?

Mr. WILKINS. Senator, the account does not mention Durham. The matter I submitted does not mention Durham.

Senator ERVIN. I understand that you referred to some statement to the effect that some colored man was denied the right to register because he was lefthanded?

Mr. WILKINS. In Hayesville Township. That is not Durham, sir.

Senator ERVIN. Where is that?

Mr. WILKINS. In Franklin County, according to this account here.

Senator ERVIN. Going back to the city of Durham though, I will ask you if you don't know that in the city of Durham they have an insurance company operated by members of the colored race and that such insurance company is the largest organization of its kind in the world?

Mr. WILKINS. They all vote in Durham, I think.

Senator ERVIN. I think so.

Mr. WILKINS. But the complaint was not against Durham.

Senator ERVIN. Yes. Well, I will ask you if you don't know that——

Mr. WILKINS. I don't have any personal knowledge of the voting in Durham, sir.

Senator ERVIN. I will ask you if you don't know though that in Durham there is an insurance company that is exclusively managed by members of your race and if you don't know that it is the largest insurance company managed by members of your race in the world?

Mr. WILKINS. I know that, but I did not know that that had any relation to the voting.

Senator ERVIN. Well, it has a relation to whether colored people are given opportunities in the State. But you do know that to be a fact, don't you?

Mr. WILKINS. Oh, yes. It is the North Carolina Mutual.

Senator ERVIN. And Mr. Spaulding, who is connected with that organization I think has served as the United States representative

or substitute representative or deputy representative as we call it, to some of the United Nations organizations, hasn't he?

Mr. WILKINS. I don't recall whether Mr. Spaulding did or not. He is dead now.

Senator ERVIN. I will ask you furthermore if you do not know that in the city of Durham we have banks that are operated exclusively by members of your race?

Mr. WILKINS. Oh, yes.

Senator ERVIN. And very prosperous institutions.

Mr. WILKINS. Oh, yes. They have them in Philadelphia, too, sir.

Senator ERVIN. And I might state that one of the men that organized the insurance company I refer to was from my county, and I have known his people for several generations and they are very fine folks and all of them that I know of vote.

Mr. WILKINS. It is the biggest financial organization among Negroes.

Senator ERVIN. Let's go back to this thing. When you ascertained that a colored man in Hayesville Township, Franklin County, had been denied the right to register because he was left handed, did you have it reported to the Department of Justice?

Mr. WILKINS. I think that case is among the affidavits submitted, sir.

Senator ERVIN. What election did that occur in?

Mr. WILKINS. This was a report published in the middle of May 1956. I presume it was the registration immediately prior to that time.

Senator ERVIN. And so far as you know, it was reported to the Department of Justice for investigation?

Mr. WILKINS. So far as I know, and I think, sir, there will be a representative here from North Carolina to testify specifically on those affidavits.

Senator ERVIN. So far as you know, has the Department of Justice directed or authorized prosecution in connection with that?

Mr. WILKINS. The Department of Justice has the matter under study, as I understand it. They very seldom tell you what they are going to do.

Senator ERVIN. Do you know the name of the party?

Mr. WILKINS. Only as reported here, Senator.

Senator ERVIN. What is it as alleged in the report there?

Mr. WILKINS. The name of the party here is reported as Richard—no, Richard Winn is the name of the registrar, but the name of the complainant is not given.

Senator ERVIN. But as far as you are personally concerned, you have no personal knowledge of any deprivation. Are you a lawyer?

Mr. WILKINS. No; I am not a lawyer.

Senator ERVIN. You have no personal knowledge of any deprivations of any rights to vote in the State of North Carolina. All you know about it is what you have read in the newspaper?

Mr. WILKINS. I also know a few other things, Senator. If you will permit me, sir, to draw a rather general conclusion——

Senator ERVIN. That is what I am objecting to. I want to know what you know of your own knowledge.

Mr. WILKINS. I think, sir—of course I will defer to whatever you say but you used Durham as an example of the general progress of

Negroes despite the voting. I would only like to cite the voting statistics for the entire State of North Carolina as an indication of an answer to your question, which I am not able to answer personally.

Senator ERVIN. Do you have the voting statistics for the last presidential election in 1956?

Mr. WILKINS. Some 145,000 Negroes were registered. This is admittedly an approximation, but in 1955 there were only 125,000 ascertainable Negroes registered in the entire State of North Carolina.

Now in 1956 that number had increased under the impetus of the presidential election, to approximately 145,000. But in the State of North Carolina, there are approximately 550,000 to 600,000 Negroes of 21 years and over, that is, eligible to vote.

Senator ERVIN. I do not want to get into a controversy with you about that, but North Carolina has only a little over 1 million Negroes altogether, and in North Carolina both the white people and the colored people have pretty big families.

I think unless you can cite me some census figures, I would have some grave doubts as to the correctness of your deductions. I do not believe that half of the people in North Carolina are over 21 years old.

Mr. WILKINS. I will be glad to submit the census figures. I am only giving you my recollection.

Senator ERVIN. As a matter of fact in North Carolina we have a little over 4 million people, and in the last election somewhere between 1 million and 1,100,000 voted. In my own county Negroes voted just like the white people voted, and no effort was made to bar them in any way. I think that is pretty good voting in view of the fact that North Carolina is a State that has perhaps the highest birthrate in the Nation and perhaps more children per family than in any other State in the Union, and in view of the further fact that in a great many of our counties we only have one-party counties.

Mr. WILKINS. Senator, I would like to say as a preface to all of this that North Carolina of course is an exceptional State. I am not saying it just because you are here. It is exceptional in many ways, on the race problem and in other ways, and it does have a higher number of registered voters than many other States about which I was speaking.

But nevertheless while it is head and shoulders above a good many of its sister States in the South with respect to Negro voting and white voting, all I was attempting to do was to show that some force operates to hold the Negro voting to below the national average, and even indeed below the North Carolina white average.

Now this is only an indication of relativity. If you want to compare it to other Southern States, North Carolina comes out as a very shining and bold example, but I assume that you do not want to be a bold example merely by comparison, but in reality.

Senator ERVIN. I think North Carolina is a pretty good State, and we have had I would say a minimum of racial discord in North Carolina.

Mr. WILKINS. Senator, for example, the other day you spoke, and very truly, about the excellent colleges you have there. You spoke of North Carolina College, as I remember.

This paper contains a report about a student at that college who was denied the right to vote because he could not satisfy the registrar as to the pronouncement of the word "municipality."

I may be mistaken, but I believe, Senator, there is the State law requirement that the applicant must satisfy the registrar; is that not correct?

Senator ERVIN. I would not say he must satisfy the registrar, but he must be able to read and write an article of the Constitution which is laid before him.

Mr. WILKINS. Well, this lad claims that he did not pronounce the words "deficit," "municipality," and "biennial" to the satisfaction of the registrar, and therefore he was denied the right to vote.

Senator ERVIN. What is his name?

Mr. WILKINS. His name is Faison; it is right there. His picture is there.

Mr. MITCHELL. He has requested an opportunity to appear, Mr. Chairman, as a witness.

Senator WATKINS. That will be taken care of later by the regular chairman. I am just substituting this morning.

Mr. MITCHELL. I was just saying it for the record.

Senator WATKINS. If you are saying it for the record, we had better have your name.

Mr. MITCHELL. I had already given it to the stenographer, Mr. Chairman. I am Clarence Mitchell, director of the Washington bureau of NAACP.

Senator WATKINS. I knew who you were, but the record would not.

Senator ERVIN. I presume necessarily that your statements in the statement that you make in behalf of the NAACP about bombings refer largely to the events that happened in Mobile, and are based largely upon newspaper accounts?

Mr. WILKINS. Senator, they are based on a little bit more than newspaper accounts. They are based on police records and reports.

Senator ERVIN. I mean so far as you are concerned?

Mr. WILKINS. I was not present when the bomb went off, if that is what you mean.

Senator ERVIN. In other words, your knowledge of them in large measure would be the same type of knowledge that I would have concerning them, or at least that I would have an opportunity to acquire?

Mr. WILKINS. Exactly, sir.

Senator ERVIN. I deplore violence on the part of any person, and I deplore violence of the kind that has occurred there, or that is alleged to have occurred there. But I would like to ask this: Do you not know it to be a fact, on the basis of information similar to this, that, when a most unprovoked attack was made on Nat King Cole, his assailants were tried in a local court and given the full penalty of the State law?

Mr. WILKINS. Yes, Senator. I am only citing the cases on which nothing was done.

You know the good never gets the headlines.

Senator ERVIN. That is true. It is only the bad. That is one thing that troubles me so much about the agitation about racial matters today. Most of the evil gets in the paper and very little of the good.

Mr. WILKINS. Senator, don't we pass laws to catch criminals and not to punish the good people?

Senator ERVIN. Yes.

Now, going back, I would like to ask you a few questions.

I am a great believer in constitutional rights myself. I have spent a good part of my life as a judge.

Don't you consider that the system of criminal justice which prevails in this country is a precious heritage from wise lawmakers of past generations? Do you not realize it to be an historical fact that the English-speaking race from which we derive our law suffered great oppressions as the result of arbitrary exercise of power by judges, such as the judges of Star Chamber Court of England?

And, do you not know that as a consequence of such oppressions the people who drew the Constitution of the United States provided these things to protect people against judicial tyranny, namely: First, that no person should be held to answer for an infamous crime until he had been indicted by a grand jury. Second, that no person could be convicted of any crime, either infamous or noninfamous, except by the verdict of a petit jury. Third, that on the trial of a case before the petit jury, each person would have the right to confront and cross-examine his accusers; and fourth, that on such trial, he should have a right to be represented by counsel who would have an adequate opportunity to prepare his case before the trial?

Mr. WILKINS. Those are the parts of the Constitution in which we are keenly interested, in the enforcement of them.

Senator ERVIN. And I might state myself that one of the opinions that I am proud of having written was one in which I set aside a conviction of a colored man for a capital offense, of which he was undoubtedly guilty on the evidence, simply because his counsel were not given an adequate time to prepare his case for trial.

The Constitution also secures these rights to each litigant in civil cases: The right to be confronted by witnesses and to have those witnesses subjected to cross-examination by himself or his counsel; the right to have his cause tried before a petit jury; and the right to have adequate representation by counsel of his own choosing.

Do you not consider that those rights are valuable enough to be safeguarded?

Mr. WILKINS. Are they not so in this legislation?

There is nothing in this legislation that destroys those, is there, sir?

Senator ERVIN. First, don't you consider——

Mr. WILKINS. I consider constitutional guaranties very important.

Senator ERVIN. The bill recommended by the Attorney General undertakes to authorize a new proceeding as far as civil-right cases are concerned to be resorted to at the sole discretion of the Attorney General, and in this new proceeding the defendants will not have the right to trial by jury, and they will not have in most cases a reasonable opportunity to confront and cross-examine the witnesses against them.

Moreover, in case they disobey or are alleged to have disobeyed an injunction issued against them without trial by jury in such proceedings, they would be denied the right to trial by jury for this alleged contempt, notwithstanding that the right of trial by jury is given to virtually every other group of American citizens in similar circumstances.

Do you think that is right?

Mr. WILKINS. Senator, I believe, and perhaps because I am a layman I am not able to follow these things exactly, but what confuses me is, is this injunctive procedure about which you speak, which you describe as a new process, is that now not presently in the law in criminal procedure and civil procedure?

Senator ERVIN. Not in civil-rights cases nor in the generality of criminal cases.

Mr. WILKINS. But it is in the law. I mean the injunctive procedure is allowable in the law; is it not?

Senator ERVIN. In a comparatively minor number of cases, the Congress has passed laws creating things which are both criminal offenses and civil wrongs, and in limited classes of cases, they have authorized injunctive relief against acts which fit both of those categories.

Mr. WILKINS. Senator, the reason I ask you this is because we have as an organization a special concern about it, because we have recently been in the courts in an injunction procedure, and we have not had any jury. We have been hauled in, as you say, summarily, but we have not maintained that this injunctive procedure, in itself as a procedure, has done us an injustice.

If you say that this is a new procedure which violates all these guaranties that you speak of, then I am genuinely alarmed, not only generally but for myself personally.

Senator ERVIN. It is a procedure which is new and does not exist in its general application to criminal laws. It is new insofar as civil-rights cases are concerned. I am interested in the civil rights of all Americans, regardless of race or color. My complaint with regard to the so-called civil-rights bills is that they undertake to secure so-called civil rights to one group of our people by denying the civil rights of all our citizens.

Mr. WILKINS. I am afraid, sir, that I am unable to say on the basis of my meager knowledge, but it does seem to me, here again from a layman's standpoint, that where you have a condition complained of repeatedly over a long period of time, and you find that certain methods and remedial efforts are not effective in erasing that condition—let's take it out of the form of civil rights.

Let's take it in any other. Suppose that you were trying to get at a corporation and you found that this procedure and that procedure and the other tried over and over again did not reach the problem you were trying to reach with the corporation, and yet there was a procedure in the law, not wholly new, not fresh, but in there which had not been used in this particular area before, and that would be the only way you could get at this corporate problem, let's say, and you employed that, would you say, sir—I am trying to understand now just as a layman—would you say that the effort to get at a persistent evil which had demonstrated its elusiveness over the years, that no employment of any other legal procedure would be justified?

Senator ERVIN. I frankly and honestly oppose these so-called civil-rights bills for the reasons indicated by me. I think that the right to be indicted by a grand jury, the right to have a trial before a petit jury, the right to have adequate representation by counsel, the right to confront and cross-examine one's adversaries in legal proceedings, and the right to be tried for criminal contempt before a jury are so sacred that they ought not to be destroyed in the case of any Ameri-

cans. If we pass the bills recommended by the Attorney General, they are going to prove a curse to people of all races.

That is my honest judgment. I will not argue law with you because you say you are not a lawyer.

Mr. WILKINS. I am not a lawyer, Senator.

Senator ERVIN. Going back to newspaper accounts of things, I read in the paper a couple of days ago where the grand jury in Alabama had indicated a number of people in connection with alleged bombings down there.

Mr. WILKINS. They arrested two yesterday.

Senator ERVIN. I understand from the press dispatch I saw that all of the indictments were not made public because they were afraid that some of the men indicted might flee and they might not be able to apprehend them.

I do not know that I have any further questions.

Mr. WILKINS. Senator, there has been an account of this arrest to which you refer, and bombings, which appeared in the Baltimore Sun datelined from Montgomery, the very cases you cited about the arrests in the bombing. You would probably be interested in this quotation:

> The jurors said "We are determined to maintain racial segregation in Montgomery."

This action and attitude suggests at least to a layman, it suggests that there ought to be many ways to get at the problem, and it seems to me the law is varied enough from all I hear.

The lawyers talk about all kinds of approaches. I am unable to understand the opposition to the section of the Attorney General's bill providing for civil suits and for injunctive procedures in a matter in which it has been demonstrated over the years that other methods have been unable to reach and eradicate, which everyone is agreed upon including your self; you said just a moment ago you won't deny anyone the right to vote. Yet if a man is denied the right to vote or register on November 5, and the election is November 6, he is denied the right to vote, period. The election is gone. He has been disenfranchised and, as I understand this legislation, it is designed to give him some relief at a time when it can be realistic.

Now if you have a trial for him in January or February or March after the election is all over, and it should be determined that, yes, he was deprived of his vote unconstitutionally and then 2 years from now he goes through the same experience, how do you correct such a situation, Senator?

Senator ERVIN. I would correct the situation by indicting the guilty parties. We have sufficient laws upon the statute books right now to secure the civil rights of all the people in the United States.

Mr. WILKINS. You say we have the laws on the statute books?

Senator ERVIN. We have sufficient laws now. My objection to the proposed law is that it undertakes to authorize, under the guise of equity, procedures which our ancestors considered to be so abhorrent to justice that they undertook to outlaw them by constitutional provisions.

The Attorney General is asking Congress to pervert equity to a use not permitted at the time of the adoption of our Constitution. He is asking Congress to establish a procedure by which he can bypass the constitutional rights of all Americans. I think that we will wind up

with the realization that what we are getting is not half so precious as what we are losing.

Mr. WILKINS. Mr. Chairman, I would like to say again, I repeat as a layman and as one who has a close personal interest in this from a group standpoint, that it appears to me that the Negro applicant, the Negro citizen, the applicant for voting rights in the South, may be likened to a man in a ditch. He is there and he is being kept there by and large, with such exceptions as we have from Senator Ervin's good State.

The question is how do we get him out?

Now we have found, I submit, that the methods presently available in the law and in the procedures and practices up to this point have not accomplished the job of getting him out of the ditch and getting him up on the high road where he can vote.

The question therefore presents itself, Shall we try a new method? not a new method outside the law, Mr. Chairman, as I understand it from Senator Ervin's patient explanation to me as a nonlawyer.

This is not a new method of law. It is simply a method that has not been applied, as I understand it, to this particular area.

Now we who are in the ditch, sir, are not too particular about which legal method gets us out as long as it is legal.

We do not want to be rescued by any unconstitutional method or any method that does violence to the rights of other people, but we are not particular, frankly, on whether we use this legal step or that legal step or a fifth legal step, as long as it is legal, because we feel that nothing that heretofore has functioned has done the job, and it seems to us that the Attorney General's language offers an opportunity to find out whether this particular method will get us out of the ditch.

Senator ERVIN. That is from your standpoint a valid argument. It is exactly the same argument that the Kings of England made when they set up star-chamber courts and denied people the right to public trials and denied them to right to representation by counsel and denied them the right of trial by jury.

The Kings of England said:

> These people want to do wrong by overthrowing me and my Government. Therefore I will adopt a speedy method of justice.

The Constitution was set up to protect all Americans against short-cut justice. I guess there is not much use in our talking about law.

Mr. WILKINS. Mr. Chairman, I would like to say that the Senator's recollection of English history is perhaps a little better than my own, but it seems to me that the Kings of England objected to any kind of restriction of their absolute power, whereas the question here is not restriction upon absolute power at all; it is a question of whether we shall use one or the other of certain legal methods to get at a problem.

I submit that in this there is only the shadow, the merest shadow, of the appearance of contest against absolutism. But here again, as with the law, I am not an expert on English history.

Senator ERVIN. I think this is putting the Attorney General in place of the king because these new laws recommended by the Attorney General will never go into operation unless the temporary occupant of the Office of Attorney General so decrees.

In other words, no race of people and no group of people can put these laws into operation unless the Attorney General so decides. It seems to me we are sort of making another king out of the Attorney General. That is the way it strikes me.

Senator WATKINS. Isn't that true with any official who prosecutes? He has to make the determination whether he will proceed or won't proceed. That is true in any State.

Senator ERVIN. Not in my State because in my State anybody can initiate a criminal prosecution and carry it out. I think that ought to be so everywhere. I think laws ought not to depend for their vitality on the whim of just 1 man out of 170 million. Just one other question and I am through.

I go to the North sometimes. I go to New York on rare occasions.

Mr. WILKINS. You should come more often, Senator.

Senator ERVIN. And I have been to Chicago. I have been through Harlem. I have been through the South Side of Chicago. I see more segregation in fact in those places than I see in North Carolina.

Mr. WILKINS. Are you asking me or making a statement?

Senator ERVIN. I am asking you if you do not have a bad situation over the entire country.

Mr. WILKINS. Senator—Mr. Chairman, with your permission—Senator, the question of segregation of course is not a localized one in the South.

No one in his right mind has ever maintained that. Segregation differs in degree. However, I am not able—here I am on a little sounder ground because I am not lost in the labyrinths of constitutional law—I am not able as a social observer to have much sympathy for the argument that because there is a Harlem in New York or a South Side in Chicago that the North is as bad in its segregation practices as are certain places in the South.

I would wish, sir, that the South could teach the North a little bit about what it has found out about living in the same neighborhoods with Negroes. An interesting study could be made of the number of southern cities in which Negroes and whites live side by side in the same block, in peace and amity and mutual self-respect.

I think of San Antonio, Tex., I think of McAlester, Okla., I think of Raleigh. Josephus Daniels, I believe, used to state that his next door neighbor was a Negro. He was Secretary of the Navy.

General Marshall, who lives near here in Leesburg, Va., has a Negro barber as a neighbor. Now this the South could teach to the North, because if you go to the outskirts of Detroit or Long Island in New York or the outskirts of Minneapolis or Seattle or other places, you find that Negroes have very great difficulty purchasing homes in the same neighborhoods with whites.

They don't have that difficulty in some cities of the South, whereas in other cities there it is very rigidly controlled.

Negroes live on one side of the railroad tracks and white people live on the other, as you well know.

But Senator, there is a little something in the segregated ghettos of the North which offers a measure of compensation for such rigid control, and this control, it ought to be said, is private and not by the State. It is not a State policy. It is not State law. And you can always escape from it if you have enough ingenuity and enough money.

But the thing that compensates for it, Senator, is that you don't have to stay in that ghetto all day and all night nor confine your activities to it. A man from Dallas, Tex., said to me, in visiting Harlem, "Well, Wilkins, I look around here and this seems to me just about the same as Dallas."

I said "Well there is one difference; you see that motion picture theater there? It has 99 percent Negro patrons, but if they do not want to go there at 127th Street and Seventh Avenue, they can go to the Roxy and they can go to the Radio City Music Hall, and if once a week or once a month he and his wife want to dress up and go to a restaurant and have a meal, they can do it. They can't do it in Dallas."

Now this may seem to be a small thing, but Senator, these are the things that minister to the spirits of men. It makes them endure a whole lot of things, in order to be able to be free, whether they exercise that freedom or not.

There are people in Harlem, I dare say, who have never been south of 110th Street. They stay right there. They are happy there. But there are others who do not stay there, and even those who do stay there always feel good because they know they could go beyond 110th Street if they wanted to do so.

And this, it seems to me, is the difference, one of the differences between the North and the South. And the other is that there is machinery in the North, there is a sentiment in the North, there is a freedom to advocate in the North for the changing of these things.

A city that may have ironclad segregation will also have a group of white people and colored people who freely meet and advocate a change in the segregated pattern, who go to the legislature and advocate laws, whereas in some southern communities—and here I believe that North Carolina falls not entirely in this category—in some southern communities you do not dare to hold a meeting or advocate a change in the status quo. It simply is, to use the German expression, verboten.

Senator ERVIN. Of course you have that situation. All of those Northern States at one time were like the Southern States. The changes came about by the consent of the people in the local communities. I think a lot of trouble comes out of the fact that you are trying to force something on people which was not forced on people in other sections of the country.

I think you and I are in perfect agreement on this: We must find a way for all Americans to live together in peace and harmony. My own opinion is that racial relationships can only be worked out on the basis of mutual good will and understanding on the local level where people live. In my lifetime we have made remarkable progress in North Carolina. Recently colored people generally did not vote in North Carolina. Despite the fact that there may still be a few instances where such condition does not exist, in the great majority of places in North Carolina a colored man has no difficulty whatever in registering and voting, which is a change in a few short years.

I have enjoyed the discussion with you.

Mr. WILKINS. Thank you, sir.

Senator WATKINS. Do you have anything further to offer?

Mr. WILKINS. I have nothing further, sir.

Senator WATKINS. As far as I can determine by the list that is handed me, we have no other witnesses who wish to appear this morning.

Do you want to examine the witness, Senator Johnston?

Senator JOHNSTON. No questions.

Senator WATKINS. I would like to say in commenting on what Senator Ervin has just said that as a lawyer I think I can point out many instances in which the injunctive process is used not only in my State and in all the other States of the Union but of course including North Carolina.

But this is no place for us lawyers to have a debate on the various provisions of law. I assume that there is going to be ample opportunity for us on the Senate floor, if and when this bill reaches there, and I think it will, to discuss all the legal problems connected with the injunctive process in civil cases and in the protection of civil rights.

Mr. WILKINS. Mr. Chairman, may I say that I certainly agree with your statement that this is no place to discuss constitutional law with a poor layman.

Senator WATKINS. I did not make that statement. Only between us lawyers.

Mr. WILKINS. On the operating table here being dissected by constitutional experts I feel very inadequate. I hope I have not wasted the Senators' time in the discussion of these problems.

Senator WATKINS. Not at all. I would say that I have profound respect for Senator Ervin, Senator Johnston and all these men who take the opposite position that I take in this matter. I have great respect for their legal ability and for their patriotism and desire to do everything that they think is right. We just have a difference of opinion on those matters, and I assume that we are going to have full opportunity to discuss all of our differences of law but we will probably do it in executive session when we get to making up a bill or when we get to the floor and discuss the bill if it is brought to the floor.

Senator Johnston?

Senator JOHNSTON. I believe you are a layman, that is true. You are just a layman, not an attorney?

Mr. WILKINS. That is right, not an attorney.

Senator JOHNSTON. Even though you are just a layman, not an attorney, you do acknowledge that there are probably a lot of constitutional questions involved in these bills?

Mr. WILKINS. Yes, indeed, sir. When you are considering the civil rights of citizens, of course they have to be considered in relation to the Constitution, and that involves constitutional law.

Senator JOHNSTON. In taking up bills of that kind you realize that you are liable to overstep the rights granted under the Constitution in regard to matters of that kind?

You have to be very careful.

Mr. WILKINS. Yes, Senator. We recognize the possibility always that, as I think Senator Ervin said a moment ago, in trying to cure one evil, you create another evil. What we would wish is that the evil sought to be corrected be recognized for its monstrous proportions, and that resolute effort be taken and daring methods be used to get at it at this time, but of course, we would never be in the position of advocating honestly and truly that anyone else's constitutional rights

be trampled upon in an effort to secure the rights for this particular group.

But at the same time we do not believe there ought to be such consideration that nothing effective is done on the admitted evil.

Senator JOHNSTON. But you do realize that we have States in this Union and they have rights too?

Mr. WILKINS. Indeed we do, and all we feel about the States—in fact, I have often said that the colored people of this country are really States righters. The only fault they find with the States-rights theory is that they have no voice in States rights.

Now give them a part of the States rights and they will be in the States-rights corner.

They believe in local government, only they want to be a part of it. But we do not believe that the rights of a State—and we do not believe that the Constitution so intended, that the whole idea of federation of States contemplated, that the rights of the States should extend to the privilege of denying a citizen his rights guaranteed under the federated constitutional Government.

In other words, while a State may maintain its rights and does so frequently, those rights do not extend to the denial of those guaranties embodied in what was the Articles of Confederation and what became the Constitution of the United States.

The federated States are indeed sovereign States, but they have also obligations to the federated Union, and these we hold they must respect at all times, particularly with respect to the sacred rights of the individual, who is at once not only a citizen of the State, the individual State, but a citizen of the federated Union, and those States must be partners in protecting the rights guaranteed in the federation.

That is the essence of our position.

Senator ERVIN. I meant to ask don't you know that colored men hold a city transportation franchise in Winston-Salem, N. C.?

Mr. WILKINS. Yes, Senator. I believe that is the only—what we call privately, the only segregated franchised Negro busline in the United States.

Senator ERVIN. Isn't it about the only franchised busline in the United States operated by colored people?

Mr. WILKINS. It may be, but I will tell you what we will trade it for: We will trade for that the 4,000 Negroes who work on the subway system of the city of New York, all the way from planning and drafting engineers down to oilers and trackwalkers.

We would rather have that kind of a transportation system than to have it said that Negroes own a busline which serves Negroes only.

I have nothing against the gentlemen of your State who have made a very good living and a fortune out of this segregated busline. They took advantage of conditions which they found imposed upon them and made the best of it, as some people who have a penchant for this sort of thing do.

We would rather have the unsegregated business than the opportunity created by imposed segregation.

Senator ERVIN. But you do not know of any other State or any other city in the entire United States in which an organization composed solely of people of your race hold a franchise, either segregated or nonsegregated, of that character, do you?

Mr. WILKINS. I would say not. I would say, sir, that that is a tribute to some fortuitous peculiarity of the North Carolina climate, both of its Negro citizens, their enterprise and alertness, and of its white citizens, their willingness to set up this kind of condition.

It is not one however that we would want to see generally adopted.

Senator ERVIN. That is all.

Senator JOHNSTON. Did you know that South Carolina had the first colored housing project in the United States, in Charleston, S. C.?

Mr. WILKINS. The first?

Senator JOHNSTON. The first Federal housing project.

Mr. WILKINS. Well, I was not aware which was the first. I knew we had a plethora of them. Charleston of course has always been, Senator—you came in just a little bit after I was remarking on the fact that in the South, in many areas of the South, they have what the Northerners are pleased to call integrated housing, and I believe in Charleston colored people and white people live in the same block, in the same neighborhoods in peace and harmony and mutual self-respect, whereas in some areas of Long Island, N. Y., that is not possible.

I was saying to Senator Ervin before you came in that this is one particular area, as demonstrated by certain examples, and you have mentioned Charleston; Sumter is another one, I believe, Sumter has the same condition.

Senator JOHNSTON. Have you checked up on the amount of colored teachers you have in New York and the amount of colored teachers you have in South Carolina to see which one has the most colored teachers employed?

Mr. WILKINS. Now, Senator, I am familiar with that question and I am familiar with the argument. I think I heard Senator Ervin detail with great geographical accuracy the other day the number of States from Illinois to Maine. I think, Mr. Chairman, Senator Ervin said, running through the States all the way from the Mississippi up to Presque Isle, there were 3½ million Negroes in those States, if I remember correctly, and in his State of North Carolina there were 1 million Negroes.

But—and I think this is the way he put it, Senator Johnston—but, he said, in the State of North Carolina with our million Negroes we have more Negro schoolteachers than they have all the way from the Mississippi River in Illinois up to Presque Isle, Maine, with their 3½ million, scattered, of course, and not under one State jurisdiction, Senator, but I overlook that. The point is that this kind of an argument is extremely accurate statistically. But in the general consideration of the problem, it is not significant.

For example, I could ask, How many Negroes do you have employed in the Motor Vehicle Bureau of the State of North Carolina?

I think in the motor-vehicle bureau alone of the State of New York we have almost as many Negro employees as you have schoolteachers in North Carolina.

Now let's put it another way——

Senator ERVIN. Wait a minute before you get off of that. We have several thousand Negro schoolteachers. If you all have that many employees in the motor-vehicle bureau I think you have got too many public officials up there.

Mr. WILKINS. Senator, Mr. Scheidt, who is the commissioner of the motor-vehicle bureau in the State of North Carolina, was there. All I attempted to illustrate by that—I will say this, if you went in to apply for a license in the automobile bureau of the State of New York, you would swear there were that many when you walked in and put your money down and asked for a license plate, you would think there were that many, but all I meant by that was this, Mr. Chairman, to illustrate Senator Johnston's point.

The opportunity for white-collar employment in South Carolina and North Carolina and in other States is limited entirely to school-teachers so far as State employment is concerned, whereas in these other States, Senators, there is no such limitation.

I mentioned a moment ago that in the Board of Transportation of the City of New York, the subway system and the bus system, we have engineers who are even now drawing plans for additional subways. We have engineers on the subway trains. We have conductors on the subway trains.

Senator WATKINS. Are you speaking of colored people?

Mr. WILKINS. Exactly, I am speaking of colored people. I am speaking of chemists, I am speaking of technicians, I am speaking of others who are on the State payrolls and who are technically white-collar employees.

Now it is perfectly possible therefore that in a State where there is no opportunity for white-collar employment except teaching, except those self-created opportunities such as the bank and the insurance company, but as far as State employment is concerned only teaching, you naturally would have more teachers—now the fair thing would be to compare the number of teachers in all the Southern States, Negro teachers, with the Negro white-collar employment in all the Northern States.

Senator ERVIN. As a matter of fact, the colored population of New York State is not so far below that of North Carolina. You probably know it better than I do.

Mr. WILKINS. It is approximately the same.

Senator ERVIN. It is somewhere between 900,000 and 1 million; isn't it?

Mr. WILKINS. That is right.

Senator ERVIN. And yet I would say that in the public-school system of North Carolina we probably have—I am guessing on this—five or six thousand more colored teachers than you have in New York, notwithstanding that, roughly speaking, our colored populations are approximately the same.

Mr. WILKINS. Of course, Mr. Chairman, this ought to be borne in mind, too. That we do not attempt to pro rate employment in the school system or any other place on the basis of population. The theory exists that this employment is given on the basis of merit without respect to color.

Senator JOHNSTON. Now, then, right there on this question of merit, in South Carolina we have a law that pays to the teachers, white and colored, a certain amount, regardless of color or race, according to their education, according to their experience.

The papers are graded by Columbia University by numbers, no names on the papers, and then they are paid by that in South Carolina; did you know that, white and colored?

Mr. WILKINS. Yes; I knew that.

Senator JOHNSTON. I signed that law while I was governor years ago.

Mr. WILKINS. That is the merit system according to grade.

Senator JOHNSTON. Now, then, that being so, when you force in South Carolina both races into one school, then you employ the best qualified on the merit system as you said just now. Did you realize that half of the colored teachers will lose their positions?

Mr. WILKINS. Senator, we realize that some will lose their positions. We don't hardly I believe, if you will pardon that grammar, that one-half will lose their jobs.

Senator JOHNSTON. I think it is one-half, knowing the amount and knowing the educational qualifications, and a great many of them only have high school in the colored schools, but it is not true in the white. That being so, you are going to bump into that, and your teachers are going to be let out and other white teachers will be brought in; isn't that so?

Mr. WILKINS. I am not sure. It has not worked that way in places which have desegregated their schools thus far. There have been some displacements in a State like Missouri, which instituted a desegregation program.

There have been some displacements in Oklahoma and there have been some in Texas, which also has desegregated its schools in the west and the south. But the displacement, Senator, has not been on a 50–50 basis. If it were on that basis, sir, then there is a good deal of exaggeration in the contentions presently being made on the Federal aid to education bill about the shortage of teachers, because if a school system can suffer a loss of 50 percent of its teaching personnel, then we are not 350,000 teachers short.

Senator JOHNSTON. Not 50 percent of the personnel; but if they were graded and enough people were let in who would make applications who were better qualified, wouldn't a great many of them lose their jobs?

That is the thing, not only on merit.

Mr. WILKINS. I am speaking of merit, sir.

If those people presently employed on merit according to this system you have outlined, have up to this time been found to be competent, I assume that under any other system that might come into effect, those who presently enjoy meritorious standing would not be arbitrarily dismissed on some other grounds, or am I in error?

Senator JOHNSTON. Well, they would be dismissed if they were all put on the merit system.

Mr. WILKINS. But they are now on a merit system; are they not?

Senator JOHNSTON. You would have to reorganize the whole school system when you consolidate the various schools, and when you did that, the ones best-qualified would be retained.

Mr. WILKINS. I am sorry, Mr. Chairman, I think I misunderstood the Senator. I thought the Senator said at the outset that all the teachers of South Carolina were now presently paid on a merit system.

Senator JOHNSTON. That is ture.

Mr. WILKINS. Yes. Now all I am trying to understand, Senator, is this: If they are presently employed and maintained on a merit system, anonymous by number and graded by Columbia University and so forth, and are now found to be meritorious teachers under that

system, under any new system why would they, some of them, be suddenly found to be not meritorious?

Senator JOHNSTON. The system is this: The trustees of a school district use the best people to teach within that particular school district. They have that right under the law. And if you reorganize, they would be forced to take the best qualified teachers to carry on the teaching staff in South Carolina.

Mr. WILKINS. The only thing I can say to that is that the Negro teachers in South Carolina who are presently employed and who are aware of this movement for desegregation of the schools have not as yet officially and as a body evidenced any disposition to discourage the desegregation of schools, so that if it threatens their jobs, they apparently are not yet aware of it.

Senator JOHNSTON. Would you be willing to let the teachers, the colored teachers of South Carolina, vote upon the proposition and see what they want?

Mr. WILKINS. They have already voted on it. They passed a resolution last year endorsing desegregation in the Palmetto State Teachers Association composed of Negro teachers.

There isn't a single Negro teacher's association in the Southern States that has not, in spite of the threat to their jobs, in spite of the knowledge that some of them will lose their jobs, that has not voted to support the desegregation program.

I have some wonderful letters from teachers saying that even if they lose their jobs, they know that the children will be better off.

Senator JOHNSTON. So some of them do realize that they may lose their jobs?

Mr. WILKINS. They do. They certainly do. What we would hope, Senator, is that all the teachers, regardless of race, who are now on marginal teaching certificates, whether white or colored, who are on substandard certificates—a lot of them are, even in New York there are a lot of them as you well know—that all these would be first taken off, and the teachers of merit left regardless of race.

Now we realize as a practical matter—and you just cited it a moment ago—that county school boards or district school boards have the right to hire and so forth.

But I submit, sir, that if every teacher, white and colored, who was on a marginal certificate, were got rid of in a consolidated school system, and all the good teachers left, white and black, that you would have no complaint from the Negro teachers, and I dare say you would have none from the whites, and you certainly would have none from the parents of the children.

Senator JOHNSTON. I guess you realize further than in South Carolina during recent years they have spent at least twice as much improving the colored schools than they have the white.

Mr. WILKINS. I know the figure is very large.

Senator JOHNSTON. Very large.

Mr. WILKINS. I know.

Senator JOHNSTON. And you agree that the colored people have more modernistic schools than the white do at the present time; isn't that right?

Mr. WILKINS. That I do not know, but I know there has been an acceleration in spending in the last 4 or 5 years under the, let us say, development of certain movements toward desegregation.

Frankly, I think former Governor Byrnes stated openly that the program of equalization, as he called it, or improvement was undertaken to forestall the possibility of desegregation.

Senator JOHNSTON. That was done, carrying out the law as interpreting the Constitution, that you could give equal facilities; that was all that was necessary. That was the Supreme Court ruling up until recently.

Mr. WILKINS. That was the 1896 ruling.

Senator JOHNSTON. The ruling from then up until just a few years ago.

We have had many rules, but the Supreme Court has held that time and time and time again.

Mr. WILKINS. I know that South Carolina has accelerated its spending in the last 5 or 6 or 7 years, Senator.

Senator JOHNSTON. That is true.

I have some letters I want to put in the record here, from the Governor of South Carolina, and also a letter here from the attorney general of South Carolina, one here from Tom H. Pope, of South Carolina, who represents the bar association, and my telegram to them showing that they have been scheduled.

Senator WATKINS. They will all be placed in the record.

(The documents referred to are as follows:)

[Official business]

UNITED STATES SENATE,
SENATE SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS,
February 18, 1957.

GEORGE BELL TIMMERMAN,
Governor, State of South Carolina,
Columbia, S. C.:

Change the date from Thursday, February 21, to Monday, March 4, at 10 a. m. Senate Office Building, Washington, D. C., to suit your convenience at the request of Senator Olin D. Johnston.

CHARLES H. SLAYMAN, JR.,
Chief Counsel, Senate Judiciary Subcommittee on Constitutional Rights.

(Send same message to the following named persons: T. C. Callison, attorney general, State of South Carolina, Columbia, S. C.; Thomas H. Pope, South Carolina Bar Association, Newberry, S. C.)

NEWBERRY, S. C., *February 16, 1957.*

Senator TOM HENNINGS,
Chairman, Constitutional Rights Subcommittee,
Senate Office Building, Washington, D. C.

As chairman of the executive committee and on behalf of South Carolina Bar Association, I request opportunity for representative of the association to be heard on the pending civil-rights bills. Due to court commitments it will be difficult for such representative to appear before your subcommittee prior to March 1. Request that association's representative be permitted to testify at the same time as representatives designated by the Governor of South Carolina.

THOMAS H. POPE.

SENATE COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
February 14, 1957.

HON. D. W. ROBINSON,
President, South Carolina Bar Association,
Columbia, S. C.

Constitutional Rights Subcommittee of Senate Judiciary Committee holding hearings this week and next week on pending Civil-Rights bills. If you or

representative of bar association should want to testify suggest that telegram be sent to Senator Tom Hennings, Chairman, Constitutional Rights Subcommittee, Senate Office Building, Washington, D. C., requesting appearance. Other persons from South Carolina expected to testify next Tuesday and/or Thursday.

OLIN D. JOHNSTON.

Official.

[Telegram to Senator Olin D. Johnston, February 9, 1957]

I have this date wired Senator Thomas C. Hennings as follows: "South Carolina requests an opportunity for its representatives to appear at hearings on civil-rights legislation before your subcommittee we would appreciate your fixing date after February 18 and advising me South Carolina's attorney general and on 1 or 2 others would like to be heard. With best wishes."

GEORGE BELL TIMMERMAN, Jr., *Governor.*

FEBRUARY 13, 1957.

Hon. OLIN D. JOHNSTON,
Senate Office Building,
Washington, D. C.:

I have this date wired Chairman Hennings as follows: "Last week I requested a hearing for representatives of the State on pending civil-rights bills. I specifically asked for date after February 18 also last week our attorney general specifically asked for a definite date after February 18, preferably after the month of February, since our legislature is in session and time is limited. Late yesterday I received a telegram from your chief counsel fixing an indefinite time after 10 a. m., on February 18. I have requested an opportunity for representatives of the State to be heard. South Carolina protests the designation of a date known to be undesirable and a time that is indefinite. We renew our request for a definite time after February 18 and preferably after the month of February. We also request that I be advised of the time and date fixed sufficiently in advance to arrange for our representatives to be present. We have received only 1 copy of each of the numerous bills pending before your committee. This, plus the fact that our attorney general had previously arranged to appear before a subcommittee of the House Judiciary Committee on Thursday of this week and another group is scheduled to appear before the same subcommittee next week, handicaps us in making adequate preparation for an appearance. Those desiring to be heard are responsible officials and other responsible citizens who in all fairness should be given ample time in which to be present. Among them are former United States Senators Charles E. Daniel and Thomas A. Wofford, and South Carolina's speaker of the house of representatives, Solomon Blatt. As previously stated to you in the attorney general's letter, "Some convenient time later than the month of February would be appreciated."

GEORGE BELL TIMMERMAN, Jr., *Governor.*

STATE OF SOUTH CAROLINA,
OFFICE OF THE ATTORNEY GENERAL,
Columbia, S. C., February 8, 1957.

Hon. THOMAS C. HENNINGS, Jr.,
Chairman, Subcommittee on Constitutional Rights,
Senate Office Building, Washington, D. C.

DEAR SENATOR HENNINGS: I am advised that you propose to begin hearings on civil-rights legislation at 10 a. m., Thursday, February 14. I am also advised by Senator Olin D. Johnston that your schedule for February 14 and 15 has been filled and that you may not be able to hold further hearings before February 18. The State of South Carolina wishes to be heard on this legislation and I will certainly consider it a favor if you could fix a definite date sometime following the 18th of February at which time South Carolina can be heard.

Due to the fact that the South Carolina legislature is in session and our time is very limited, I would appreciate it if we could be given an opportunity to be heard at some convenient time later than the month of February. If, however,

you desire to have us appear on the 18th, or any subsequent date, we will be glad to comply with your wishes.

Yours very truly,

T. C. CALLISON, *Attorney General.*

Hon. OLIN D. JOHNSTON,
Senate Office Building,
Washington, D. C.:

I am glad to have your letter with reference to hearings before the Committee on Civil Rights. I will see you in Washington Wednesday, February 13, with view of trying to arrange a definite time.

(Signed) T. C. C.

FEBRUARY 16, 1957.

Senator OLIN D. JOHNSTON,
Senate Office Building:

I have been designated to appear on behalf of the South Carolina Bar Association and in response to your telegram to D. W. Robinson I have today sent the following telegram to Senator Hennings: "As chairman of the executive committee and on behalf of South Carolina Bar Association, I request opportunity for representative of the association to be heard on the pending civil rights bills. Due to court commitments it will be difficult for such representative to appear before your subcommittee prior to March 1. Request the association's representative be permitted to testify at the same time as representatives designated by the Governor of South Carolina."

THOMAS H. POPE.

Senator WATKINS. I may advise the public, that includes everybody at present, that I have been advised that those who wish to speak on the measures now being studied by the committee have, for the most part, been heard. There will be a few more.

I say that so that those of you will realize that time will be available for you, beginning even at the next session, or you could appear this morning, if you wish to take up the rest of the time this morning.

Mr. WILKINS. Am I excused, Mr. Chairman?

Senator WATKINS. If there are no further questions.

There are no further questions.

Yes, you are excused.

Senator ERVIN. I ask consent to insert in the record at this point a letter which I received from Thomas F. Ellis, a lawyer, of Raleigh, N. C., reading as follows: I omit the first paragraph, which is purely personal in nature.

Senator WATKINS. You may read it.

Senator ERVIN (reading):

I served for 2 years as Assistant United States Attorney for the Eastern District of North Carolina. It is my recollection, without having FBI files available to me at this time to review, that there were only one or two instances during that period when complaints were made as to denial of the right to vote by any citizen in eastern North Carolina.

These complaints were not made through the United States Attorney's office in Raleigh, but as I recall, telegrams were sent to the Justice Department in Washington, D. C. The Department of Justice in turn requested an investigation by local FBI agents.

As you know, most of the FBI agents in North Carolina were born, raised, educated in States far removed from North Carolina and thoroughly indoctrinated by the Federal Bureau of Investigation schools before coming to this State. At the present time there are approximately 15 agents assigned to this district, 5 from Brownell's State, New York, 7 from other Northern and Midwestern States and 3 North Carolinians.

Almost 100 percent of the FBI agents that I have known and worked with have made impartial investigations on all matters assigned to them. All civil rights investigations were turned over to our office only after being processed

by the Civil Rights Division of the Department of Justice. All civil rights matters are processed by the Department of Justice first with regard to recommending prosecution, and not by the local United States Attorney.

This is the only type of action (civil rights) that is handled by the FBI in this manner. The two cases that I recall arose with regard to voting were complaints from the same registrar and the Justice Department did not require filing of complaints.

In conclusion, in our heaviest Negro-populated areas in North Carolina over a period of 2 years and involving several hundreds of registrars in the precincts in this area, there was not a single instance that I can recall where a complaint processed by the Federal Bureau of Investigation and Department of Justice resulted in a recommendation for prosecution for violation of the civil rights section of the United States Code.

With assurances of my high regard, I am

Sincerely yours,

THOMAS F. ELLIS.

The above may be used in any manner you see fit, including presentation of any portion thereof as evidence before your committee.

That is all, Mr. Chairman.

Senator WATKINS. For tomorrow, we have two witnesses listed, Mr. Charles J. Bloch, Esquire, Macon, Ga.; and the Honorable Eugene Cook, attorney general of Georgia.

I have been instructed to recess this hearing until tomorrow at 10:30 a. m., and the hearings tomorrow will be held in room 155, Senate Office Building.

The committee will be in recess.

(Whereupon, at 11:55 a. m., the subcommittee recessed, to reconvene at 10:30 a. m., Wednesday, February 20, 1957, in room 155, Senate Office Building.)

CIVIL RIGHTS—1957

WEDNESDAY, FEBRUARY 20, 1957

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

The subcommittee met, pursuant to recess, at 10:45 a. m., in room 155, Senate Office Building, Senator Sam Ervin, presiding.

Present: Senators Ervin (presiding) and Johnston.

Also present: Charles H. Slayman, Jr., chief counsel, Constitutional Rights Subcommittee.

Senator ERVIN. The committee will come to order.

The committee is scheduled to hear this morning the Honorable Charles S. Bloch, Esq., of Macon, Ga., and the Honorable Eugene Cook, attorney general of Georgia. On behalf of the committee I welcome Mr. Bloch, who is now present.

I have known of Mr. Bloch by reputation for many years. I have had the privilege of knowing him personally for approximately 10 years. I welcome you, Mr. Bloch, because I know you to be one of the ablest lawyers and one of the finest citizens of our country. We are very glad to have you here.

Mr. SLAYMAN. Mr. Chairman, with your permission and the permission of Mr. Bloch, before we get started today, I have three announcements to make as chief counsel of the subcommittee.

Actually, I would like to have Mr. Bloch make the third one, and put something in the record with reference to the other witness.

The first is that the regular chairman of the subcommittee, Senator Thomas C. Hennings, Jr., of Missouri, had to be at the White House for a special meeting this morning on foreign affairs, and as we have remarked several times, a person is not able to be in two places at the same time.

The second announcement is in terms of the schedule ahead.

We have a South Carolina delegation scheduled for Monday, March 4, and we have two witnesses scheduled tomorrow.

We have three witnesses who were about to be heard Saturday, when a question of time and cross-examination came up, so they were not able to be heard on Saturday, but are to be heard at some time in the future.

Aside from those people, we have a large number of people who have expressed interest in testifying, but who have not established a definite date with us; so in those terms, next week is pretty thoroughly open for the scheduling of witnesses.

Senator ERVIN. I might state that I have contacted the folks who had asked me for the privilege of testifying and urged them to let

me know as soon as possible when they could appear. I suggested to them that they make their arrangements to appear next week.

Mr. SLAYMAN. Thank you very much, Senator. I have wired some of those at your request but I have not heard from them yet. Next week would be highly desirable to hear them, especially since the subcommittee agreement is to terminate all of the hearings on Tuesday, March 5.

Thank you, Mr. Chairman.

Senator ERVIN. You have been requested by Mr. Slayman, our chief counsel, to make an announcement in behalf of Attorney General Cook.

STATEMENT OF CHARLES J. BLOCH, ATTORNEY AT LAW, MACON, GA.

Mr. BLOCH. Yes, sir, I have a telegram from the attorney general saying:

I regret exceedingly that I am confined in the hospital with a minor virus and am unable to appear before the Senate committee on proposed so-called civil-rights bills. Please express my appreciation to the committee for the opportunity.

Which I do—and there has been filed with the committee a copy of the attorney general's statement.

Senator ERVIN. Without objection, the copy of the attorney general's statement will be included in the record.

(The statement submitted by Mr. Cook is as follows:)

IN OPPOSITION TO PROPOSED CIVIL-RIGHTS LEGISLATION, BY EUGENE COOK, THE ATTORNEY GENERAL OF GEORGIA

Mr. Chairman and gentlemen of the committee, it has been my singular pleasure to appear before a committee of the House almost 2 weeks ago to discuss proposed so-called civil-rights legislation pending before that body. It is no less a pleasure for me to appear here today to discuss similar bills now being considered by the Senate.

While I have received no less than 13 of these bills, my remarks will be confined to 2 of them, S. 83 and the subcommittee print, which contain in more or less omnibus fashion, the major provisions of most of the others.

Section 101 et seq. of S. 83, and section 201 of the subcommittee print provide for creation in the executive branch of the Government a Commission on Civil Rights, to be composed of six members appointed by the President with the advice and consent of the Senate.

As pointed out by Congressman Walter in the hearings on a similar bill last year, it is contradictory for this measure to recite the need for study, evaluation, and recommend tion as to remedial legislation, while contemporaneously therewith are submitted accompanying provisions which go about as far as conceivably possible in enacting the same legislation about which it is said further study is needed.[1]

Enactment of this legislation would result in creation of a Federal Gestapo which would hold needless investigations, pry into the affairs of the States and their citizens, and intimidate a majority of our citizens solely to appease the politically powerful minority pressure groups inspired by the communistic ideologies of the police state.

For example, as noted in the minority report on H. R. 627, which was before the House last year, it was pointed out that the Commission would have a right to hold hearings in some far-off remote place and require attendance of witnesses at their own expense, as no travel or per diem expenses are provided for. Similarly, the report noted that this bill (as do the ones now under considera-

[1] See Transcript of House Committee of April 10, 1956, p. 19.

tion) authorizes the Commission to utilize the "services, facilities, and information of other Government agencies, as well as private research agencies," and concluded with the observation that these "private agencies" would probably be the NAACP, the American Civil Liberties Union, and other leftwing, partisan, political-action groups.

Thus, the situation would be created where governmental powers would be delegated to these private groups to investigate and harass other citizens and organizations. The awful power of the State would thereby be given to a few as against the many.

No one can imagine what this Commission will cost the taxpayers, as no limitation is put upon its expenditures, but on the contrary, the Commission is authorized "to make such expenditures as in its discretion it deems necessary and advisable." Presumably, the Commission might donate public money to the Communist Party, if it determined that such would promote the cause of racial amalgamation.

Before the Congress authorizes the Government to enter into such an unholy partnership with these minority groups, it would do well to study some of their pronouncements.

Save only the Communist Party, with its "Southern Manifesto" of 1929, the most aggressive proponent of these civil-rights measures is the NAACP, and while this self-proclaimed pious group fervently crusades against prejudice and race bigotry out of one side of its mouth, it conducts a conspiracy against the white man out of the other.

In its national publication, The Crisis, volume 62, page 493 (October 1955), quotes are made gleefully predicting the downfall of the white race, and urging the colored people to revolt and take up arms against their white brothers. It was said, specifically:

"Give him a little more time and the white man will destroy himself and the pernicious world he has created. He has no solutions for the ills he has foisted upon the world—none whatever—he is empty, disillusioned, without a grain of hope. He pines for his own miserable end.

"Will the white man drag the Negro down with him? I doubt it. All those who he has persecuted and enslaved, degenerated and emasculated, all of whom he has vampirized will, I believe, rise up against him on the fateful day of judgment. There will be no succor for him; not one friendly alien hand raised to avert his doom. Neither will he be mourned. Instead, there will come from all corners of the earth, like the fathering of a whirlwind, a cry of exultation: 'White man, your day is over! Perish like the worm! And may the memory of your stay on earth be effaced!' "

In its issue of November 1955 (vol. 62, pp. 552–553), the magazine vehemently justifies the merciless slaughtering and raping of innocent white French inhabitants in Oued-Zem by the colored Berber tribesmen on the ground that the French inhabitants deserved such treatment.

The Commission is authorized to hold hearings and subpena witnesses, subject to pain of contempt, merely on the basis of "written allegations." There is no requirement that the charges be sworn to, or that they be based on firsthand knowledge. Our English system of jurisprudence has traditionally required that a person should not be subjected to prosecution except on the basis of sworn charges. Rank hearsay could, under these bills, be accepted as sufficient cause for inquiry.

The same subsection of these bills would authorize the Commission to investigate "allegations * * * that certain citizens * * * are being subjected to unwarranted economic pressures by reason of their sex, color, race, religion, or national origin."

Just what is meant by "unwarranted economic pressures" is not stated, but by the use of carefully drawn language the section is careful to avoid tramping on the hallowed ground of labor union pressures. In other words, a person can be subjected to all types of pressures and intimidation because of nonmembership in a labor union, and his plight would be no concern of the Commission.

Moreover, the authority of the Commission is not limited to any form of State action, but unquestionably embraces private individuals as well. So recently as 1955, in *Quinn* v. *United States* (349 U. S. 155, 161, 99 L. ed. 964, 971, 75 S. Ct. 668), it was said by the Supreme Court:

"But the power to investigate, broad as it may be, is also subject to recognized limitations. It cannot be used to inquire into private affairs unrelated to a valid legislative purpose. Nor does it extend to an area in which Congress is forbidden to legislate."

The same limitations, at least in the respect relevant here, are likewise applicable to an executive commission. Nowhere in the Constitution is there any authority for any branch of the Federal Government to assume general police powers and undertake to deal with the relations between one private citizen and another.

Perhaps the authors of this dangerous provision, well aware that Congress lacks power to enact penal legislation covering such a broad field, seek to accomplish the same objective indirectly, by a process of intimidation through "packed" hearings held in a hostile atmosphere.

The action of sectarian schools in employing teachers of one religion could be called in question under this section, for who could say that one of another creed denied employment was not thereby subjected to an "economic pressure" because of his religion?

Under S. 83, the Commission would be authorized to hold hearings in secret, an idea apparently borrowed from procedures established in star-chamber days.

Section (X) of this bill also declares in considerable detail that access for coverage of the hearings shall be afforded to the newspapers, radio, and television, which leads one to question whether the purpose of this bill is to achieve public good or to help mend political fences in areas dominated by well-defined minority groups.

Under section 203 (b) of the subcommittee print, and under section 105 (f) of S. 83, a witness failing to respond may be held in contempt by a court either in the jurisdiction where the inquiry is carried on, or where the person resides. We are thus presented with the anomaly of a bill which purports to vindicate civil rights, devising a scheme whereby one of the most fundamental of all civil rights enunciated by the Bill of Rights is destroyed. The sixth amendment to the Constitution of the United States provides that:

"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 * * *."

Under this bill, a witness residing in Florida could be tried for contempt by a Federal court in Oregon, requiring him to travel thousands of miles and employ counsel to defend charges in a foreign and hostile surrounding, or else be arrested and transported against his will outside the State to a distant "Siberia."

Section 111 of S. 83 would provide for an additional Assistant Attorney General in the Department of Justice, and section 301 et seq. of the subcommittee print establishes a Civil Rights Division in the Department of Justice, and increases the personnel of the FBI to include trained experts in civil-rights cases.

In the report accompanying S. 902, a similar bill introduced last session, it is said that this would give the civil-rights enforcement program "additional prestige, power and efficiency which it now lacks."

In view of Mr. Brownell's own admission that civil-rights complaints are at an all time low, it seems difficult at this time to justify expanding this phase of the Justice Department's activities. This very fact will encourage meddling and baseless suits by the new board of bureaucrats who will surely perceive that they must stir up litigation to justify the expense of their existence.

In addition, as mentioned in the report, it is anticipated that additional personnel will be required should other proposed civil-rights measures be enacted, this apparently having reference to the bills which would confer unheard-of injunctive powers on the Attorney General. Reduced to simple language, the police state must have an adequate supply of storm troopers to keep the States and their citizens under constant fear of being enjoined, sent to jail, called up before some commission in far off places in a hostile surrounding, and kept in a general state of intimidation to appease the vociferous minorities which by their militant organizations have now apparently wrested control of our Government from the people.

Sections 121 and 131 (c) of S. 83 authorize the Attorney General to institute action for injunction to enforce civil rights of any person, without regard to whether that person himself desires that such litigation be brought, and without regard to whether State administrative remedies have been exhausted.

Section 501 of the subcommittee print contains a similar provision.

There are two very disturbing features of these proposals.

The first is that part which gives the Attorney General power to institute injunctions suits at his own election, and without regard to whether the party whose rights are affected actually desires such litigation. Such a procedure is contrary to every recognized principle of English and American jurisprudence.

In *McCabe* v. *Atchison, T. & Sante Fe R. Co.* (1914) (235 U. S. 151, 162, 59 L. Ed. 169, 35 Supt. Ct. 69), it was said:

"It is an elementary principle that, in order to justify the granting of his extraordinary relief, the complainant's need of it, and the absence of an adequate remedy at law, must clearly appear. The complainant cannot succeed because someone else may be hurt. Nor does it make any difference that other persons who may be injured are persons of the same race or occupation. It is the fact, clearly established, of injury to the complainant—not to others—which justified judicial intervention."

This salutory principle—that one can not litigate the constitutional rights of another—has received frequent application in the courts, particularly in the field of so-called discrimination cases. See *Missouri ex rel Gaines* v. *Canada* (1938) (305 U. S. 337, 351, 83 L. Ed. 208, 214, 59 Sup. Ct. 232); *Brown* v. *Board of Trustees* (C. A. 5th 1951) (187 F. 2d 20, 25); *Cook* v. *Davis* (C. A. 5th 1949) (178 F. 2d 595, 599); *Williams* v. *Kansas City* (D. C. Mo. 1952) (104 F. Supp. 848, 857 (7, 8)); *Brown* v. *Ramsey* (C. A. 8th 1950) (185 F. 2d 225).

Constitutional rights have always been considered vital, personal rights, and to permit others to come into court asserting them can only result in their cheapening and the worsening of Federal-State relations.

The exhaustion of administrative remedies is firmly established in Federal law. It is applied with unyielding vigor as respects all of the many government agencies which have come into being in the last 30 years and which touch all phases of human activity.

Where the administrative remedies are those of the state, the principle becomes one which gives recognition to our dual system of government and seeks to preserve the delcate balance by prohibiting unseasonable interference by Federal courts.

As ably stated by Judge Sibley in *Cook* v. *Davis* (178 F. 2d 595, 600):

"The rule that a suitor must exhaust his administrative remedies before seeking the extraordinary relief of a court of equity (citing many cases), is of special force when resort is had to the Federal courts to restrain the action of State officers (again citing many cases)"; *Natural Gas Pipeline Co.* v. *Slattery* (302 U. S. 300, at 310, 58 Sup. Ct. 199, at p. 204, 82 L. Ed. 276). At page 311 of 302d United States Reports, at page 311 of volume 58 Supreme Court, the Court, pertinently to the present case, observes: 'There are cogent reasons for requiring resort in the first instance to the administrative tribunal when the particular method by which it has chosen to exercise authority, a matter peculiarly within its competence, is also under attack, for there is a possibility of removal of these issues from the case by modification of its order.' The Federal courts have undoubted jurisdiction to enquire by the writ of habeas corpus whether a restraint of liberty under State authority is contrary to the Federal Constitution, but the rule is well settled that ordinarily State remedies must first be exhausted. (Ex parte Hawk, 321 U. S. 114, 64 Sup. Ct. 449, 88 L. Ed. 372, and this rule has been made statute by title 28 U. S. C. A. sec. 2254.)"

The same principle of comity find further expression in the rule that the Federal courts will generally refuse to pass upon the constitutionality of a State statute until it has received an authoritative interpretation by the highest State court. See *Railroad Commission of Texas* v. *Pullman Company* (312 U. S. 496, 85 L. Ed. 971); *American Federation of Labor* v. *Watson* (327 U. S. 582, 596–600, 90 L. Ed. 873, 66 Sup. Ct. 761); *Shipman* v. *DuPre* (339 U. S. 321, 94 L. Ed. 877, 70 Sup. Ct. 640); *Leiter Minerals* v. *U. S.* (352 U. S. 220, 1 L. Ed. 2d 267).

Such legislation as here proposed will inevitably destroy the States. To destroy the States will just as inevitably destroy all the civil rights which all our people are now being adequately accorded.

When Attorney General Brownell testified before the House Judicial Committee on April 10, 1956, he attempted to justify the grant of injunctive powers on the ground that criminal proceedings always produce strong public indignation and promote friction. He stated:

"And another point. Criminal prosecution for civil-rights violations, when they involve State or local officials, as they often do, stir up an immense amount of ill feeling in the community and inevitably tend to cause very bad relations between State and local officials on the one hand, and the Federal officials responsible for the investigation and prosecution on the other. And we believe that a great deal of this could be avoided, and should be avoided if Congress would authorize the Attorney General to seek preventive relief from the civil courts in these civil-rights cases." [2]

[2] See transcript of hearing, p. 15.

The Attorney General then referred to the strong indignation which was provoked in one county as a result of an FBI investigation regarding alleged discrimination in jury service. Although the specific case was not named, he undoubtedly had reference to *Reece* v. *Georgia* (350 U. S. 85, 76 Sup. Ct. 167), in which protest was justifiably made by members of the Georgia delegation as well as local officials, when an FBI investigator suggested to the Cobb Solicitor General that the State not retry this brutal, twice convicted rapist, although the issue of jury service by Negroes and nothing to do with the accused's guilt, and the Court's decision itself merely reversed a judgment sustaining a demurrer to the motion to quash.

Needless to say, the FBI finally gave Cobb County a clean bill of health, and the prisoner has since been executed.

However, if, as Mr. Brownell admits, criminal proceedings always cause strained feelings in any given area, it would seem that injunctive proceedings would cause even more friction. When injunctions are issued, it puts the court in a more or less administrative position, and ultimately may involve criminal proceedings as well as civil. Whereas regular criminal proceedings are always against an individual, injunctions are brought against officials requiring official action, and bring the State and Federal Governments into sharper conflict than any isolated criminal prosecution ever could.

Obviously, the undisclosed purpose behind this particular provision is to authorize overambitious Federal courts to issue blanket injunctions against whole communities, and deprive them of the sacred right of jury trial under the guise of exercise of equitable jurisdiction. In effect, it is a disguised attempt to enforce criminal laws by injunction, and thereby deprive our citizens of jury trial.

Section 401, et seq., of the subcommittee print is labeled the "Federal Antilynching Act."

These sections, as do a number of other similar bills before the House and Senate,[3] define "lynching" as action by 2 or more persons in committing or attempting to commit violence upon any person because of his race, religion, or color, or, secondly, the exercising or attempting to exercise by 2 or more persons of the power of punishment for crime against any person held in custody on charges or after conviction. It is to be noted that this new version of the antilynch statute, unlike some of its predecessors, does not contain the express exemption as to violence arising out of labor disputes, but is carefully phrased in such a subtle manner as to accomplish the same objective without language which would be apparent to the casual reader. It is hypocritical, to say the least, for the labor-union leaders who have so vigorously advocated this legislation to completely ignore their own problem and secure exemption from the bills' coverage. Murder committed against innocent people trying to make a living for themselves during a labor dispute is no less despicable than murder committed because of one's race, and it is only necessary to read the daily newspapers to perceive which occurs most frequently.

Under the wording of these bills, where a member of a minority commits violence against a member of the majority race, such action would merely constitute assault and battery under State law, but if a member of the majority similarly violated the rights of a member of the minority, it would, ipso facto, rise to the level of a Federal offense, and the accused could be punished not only under Federal law, but also in State courts. For committing identical acts, the white man would be tried in 2 courts and given 2 prison sentences whereas the Negro would be tried only in State court and receive only 1. This bill does not guarantee equal protection—it assures unequal protection.

But this is only a milder feature of these radical proposals. Provision is made whereby any aggrieved person can sue for damages not only the police officers, State or Federal, who, it is alleged, failed to take necessary action to afford protection, but the municipality, State, and United States as well.

Under the pretense of vindicating the Constitution, these bills would justify legislative defiance of the 11th amendment's commands that suit may not be brought in Federal court against a State without its prior consent. As early as 1828 it was settled that an action to recover money from a State treasury is a suit against the State and not maintainable in Federal court (*Sundry African Slaves* v. *Madrazo*, 1 Pet. 110, 7 L. Ed. 73; see also *Larson* v. *Domestic & Foreign Commerce Corp.* (1949), 337 U. S. 682, 93 L. Ed 1628, 69 S. Ct. 1457). While counties and municipalities have never been considered the "State" and accord-

[3] H. R. 957, 1097, 143, 441, 359, and 159; S. 429 and 505.

ingly are not subject to the 11th amendment's immunity against suit (*Lincoln County* v. *Luning* (1890), 133 U. S. 529, 33 L. Ed. 766, 10 S. Ct. 363 (county); *Old Colony Trust Co.* v. *Seattle* (1926), 271 U. S. 426, 70 L. Ed. 1019, 46 S. Ct. 522 (municipality)), it has been held that the existing civil-rights statutes were not intended to confer damage claims against a municipality itself, as distinguished from its agents (*Charlton* v. *City of Hialeah* (C. A. Fla., 1951), 188 F. 2d 421; *Hewitt* v. *Jacksonville* (C. A. 5th 195), 188 F. 2d 423, certiorari denied, 342 U. S. 835; *Shuey* v. *State of Michigan* (D. C. Mich. 1952), 106 F. Supp. 32).

Although the bills generally provide as a defense to suit for damages the fact that police officers in the area where the "lynching" occurred took all possible action to prevent same, the mere abstract existence of this defense affords little consolation to anyone familiar with the practicalities of civil-rights litigation. Within the past 10 years or so, probably more damage suits have been brought until title 42, United States Code annotated, sections 1983 and 1985, than in all the previous years since adoption of the 14th amendment. A review of the reported decisions will disclose some of the most absurd, farfetched, and groundless claims ever conceived of. Frequently, these complaints are home drawn by individuals who have heard so much about civil rights that they have come to believe every minor grievance they have, real or imaginary, to constitute a matter of grave constitutional concern. It is not enough that the complaint may eventually be dismissed or the relief prayed for denied. The defendants who would have to defend these suits should not be required to undergo the expensive burden of litigation in Federal court.

Moreover, the State courts have historically and traditionally been the proper place for determination of damage claims, and the proposed bill is, in effect, an attempt to create a Federal wrongful-death statute. If the State courts commit error of a Federal nature, and only matters of a Federal nature could be litigated in Federal district courts anyway, it should not be assumed that the United States Supreme Court will ignore its duty on certiorari or appeal.

The most fundamental infirmity in these bills, however, is that they apply not only to State officers, but to private individuals as well.

When the 14th amendment was under consideration in Congress, the preliminary drafts were phrased in terms of prohibition against denial of due process or equal protection by any person, whether State officials or otherwise. This language was later changed to its present form, which is that "no State shall deny * * * due process * * * or equal protection of the laws" (see Flack, Adoption of the 14th amendment, pp. 60–62). This change in language was referred to in the debates on the later civil-rights statutes as being indicative of the fact that the final draft was intended only as a limitation on State action (Flack, supra, p. 239).

In the classic case defining the scope of the due-process and equal-protection clauses of the 14th amendment, *Civil Rights Cases* ((1883), 109 U. S. 12, 27 L. Ed. 839, 3 S. Ct. 22), the Court had under review several convictions under sections 1 and 3 of the Civil Rights Act of 1875 (18 Stat. 335) which made it a Federal offense for any person to deprive any other person of equal accommodations in inns, public conveyances, and theaters, the indictment alleging that defendants had refused certain Negroes, because of their race, admission to an inn and theater.

In holding the statute unconstitutional as exceeding the powers of Congress under the 14th amendment, it was said:

"It is State action of a particular character that is prohibited. Individual invasion of individual rights is not the subject matter of the amendment."

* * * * * * *

"It 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. * * * (Id., p. 11.)

* * * * * * *

"In this connection it is proper to state that civil rights, such as are guaranteed by the Constitution against State agression (due process and equal protection), 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 * * *"

In the case of *United States* v. *Harris* ((1883, 106 U. S. 629, 27 L. Ed. 290, 1 S. Ct. 601), section 5519 of the Revised Statutes was before the Court for consideration. This section declared it a crime for two or more persons to conspire to deprive any person or class of persons of the equal protection of the laws. Its language, as pointed out recently by the Supreme Court in *Collins* v. *Hardyman* ((1951), 341 U. S. 651, 657, 90 L. Ed. 1253, 1257, 71 S. Ct. 937), is indistinguishable from a civil provision now known as title 42, United States Code Annotated, section 1985 (3).

In the Harris case, the defendants were charged under the penal provision, to wit, section 5519, with having assaulted and beaten several prisoners who were being held in the custody of State police officers. The Supreme Court held the statute unconstitutional in that it was "not limited to take effect only in case the State shall abridge the privileges or immunities of citizens of the United States, or deprive any person of life, liberty or property without due process of law."

As recently as 1948, in *Shelley* v. *Kraemer* (334 U. S. 1, 13, 92 L. Ed. 1161, 1180, 68 S. Ct. 836), the Supreme Court declared with respect to the scope of the 14th amendment:

"Since the decision of this Court in the *Civil Rights Cases* (109 U. S. 3, 27 L. Ed. 835, 3 S. Ct. 18 (1883)), the principle has become firmly embedded in our constitutional law that the action inhibited by the first section of the 14th amendment is only such action as may fairly be said to be that of the States. That amendment erects no shield against merely private conduct, however discriminatory or wrongful."

Even so vigorous a proponent of civil rights as Mr. Justice Douglas, writing for the majority in *Screws* v. *United States* ((1945) 325 U. S. 91,, 89 L. Ed. 1495, 65 S. Ct. 1031), held that:

"The fact that a prisoner is assaulted, injured, or even murdered by State officials does not necessarily mean that he is deprived of any right protected or secured by the Constitution, or laws of the United States."

It is therefore clear beyond all question that these antilynching bills cannot be sustained under the 14th amendment as due process or equal protection measures. It now only remains to be seen whether they could be upheld as an exercise by Congress of its powers to protect federally secured rights.

In this respect in *United States* v. *Cruikshank* ((1876) 92 U. S. 542,, 23 L. Ed. 588), it was said:

"We have in our political system a Government of the United States and a government of each of the several States. Each one of these governments is distinct from the others, and each has citizens of its own who owe it allegiance, and whose rights, within its jurisdiction, it must protect. The same person may be at the time time a citizen of the United States and a citizen of a State, but his rights of citizenship under one of these governments will be different from those he has under the other."

* * * * * * *

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

In the *Slaughter House Cases* ((1873) 16 Wall. 36, 21 L. Ed. 394), which was the first decision construing the 14th amendment, it was held that the amendment's reference to "privileges and immunities of citizens of the United States" only operated as a prohibition against State encroachment on rights and privileges which devolved upon a citizen by virtue of his status as a citizen of the United States, as distinguished from his status as a citizen of the State. In so holding, the Court declared;

"Of the privileges and immunities of the citizens of the United States, and of the privileges and immunities of the citizens of the State, and what they respectively are, we will presently consider; but we wish to state here that it is only the former which are placed by this clause under the protection of the

Federal Constitution, and that the latter, whatever they may be, are not intended to have any additional protection by this paragraph of the amendment."

Moreover, it was determined that it was not the intention of Congress in submitting, and the intention of the people in ratifying, "to transfer the security and protection of all the civil rights which we have mentioned from the States to the Federal Government." (Id., 21 L. Ed. at p. 409.) As stated by the Court, "But, however pervading this sentiment, and however it may have contributed to the adoption of the amendments we have been considering, we do not see in those amendments any purpose to destroy the main features of the general system. Under the pressure of all the excited feeling growing out of the war, our statesmen have still believed that the existence of the States with power for domestic and local government, including the regulation of civil rights, the rights of person and of property, was essential to the perfect working of our complex form of government, though they have thought proper to impose additional limitations on the States, and to confer additional power on that of the Nation."

In distinguishing between the privileges and immunities that arise from State citizenship, and those that arise from national citizenship, the Court gave as examples of the latter, the right "to come to the seat of Government to assert any claim he may have upon Government, to transact any business he may have with it, to seek its protection, to share its offices, to engage in administering its functions"; the "right of free access to its seaports, through which all operations of foreign commerce are conducted, to the subtreasuries, land offices, and courts of justice in the several States"; the right "to demand the care and protection of the Federal Government over his life, liberty, and property when on the high seas or within the jurisdiction of a foreign government"; the "right to peaceably assemble and petition for redress of grievances", the "privilege of the writ of habeas corpus"; the right to "use navigable waters of the United States, however they may penetrate the territory of the several States, and all rights secured to our citizens by treaties with foreign nations"; and the right of a citizen of the United States to become a citizen of a state merely by residing therein.

On the other hand, the rights recognized by the courts as arising from relation of the citizen to the State, are much broader, to wit, "protection by the Government, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety, subject, nevertheless, to such restraints as the Government may prescribe for the general good of the whole."

A case which absolutely controls this question is *United States* v. *Powell* ((C. C. Ala. 1907) 151 F. 648), where the defendant had been indicted under sections 5508 and 5509 of the Revised Statutes, the indictment alleging that the accused had participated in a mob overpowered the sheriff of Huntsville, Ala., and lynched a Negro prisoner being held in custody by the sheriff on charges of murder. It was further alleged in the indictment that such action deprived the deceased of the "right, privilege and immunity of a citizen of the United States" to have his case tried regularly in the courts according to prevailing modes in conformity to due process.

The circuit court reasoned that it was well within the power of Congress to punish individuals who committed such acts, on the ground that since the 14th amendment required the State to afford due process, which unquestionably is not satisfied by execution without trial, action by private individuals, which prevented the States from doing their constitutional duty was in effect interference with the Constitution's command, and hence the proper subject of congressional action. However, the court noted that what it considered obiter dictum by the Supreme Court in *Hodges* v. *United States* ((1906) 209 U. S. 1, 51 L. Ed. 65, 27 S. Ct. 6), would require a different result, and hence determined that the appropriate course would be to sustain a demurrer to the indictment and give the Supreme Court the opportunity of adopting or rejecting its statements in the Hodges case, rather than for it, an inferior court, to hold that the Supreme Court's language had gone further than the facts there justified.

On appeal, the Supreme Court affirmed in a per curiam opinion which merely stated:

"The judgment is affirmed on the authority of *Hodges* v. *United States* * * *" *United States* v. *Powell* ((1909) 212 U. S. 564, 53 L. Ed. 653, 29 S. Ct. 690).

This disposition of the Powell case puts at rest the argument that the "right to be free from lynching is a right of all persons" and "citizens" as declared in several of these bills. The broad assertion in some of them, such as the subcommittee print, S. 505, and H. R.'s 359, 441, 143, 957 that "such right * * *

accrues by virtue of such citizenship" is in direct conflict with the Powell decision, and constitutes defiance of the Supreme Court from the same quarter which delights in accusing others of such action.

That the constitutionality of Federal anti-lynching legislation is questionable should be apparent from the statements of one of the present Supreme Court Justices, who, while he was Attorney General, had this to say regarding a similar provision in civil-rights proposals advanced in 1949:

"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 14th 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 14th 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 14th amendment."

Attorney General Clark undoubtedly was unfamiliar with the Powell case, supra, for if he were, I am sure his fears as to unconstitutionality would have been without reservation.

Section 102 of the subcommittee print undertakes to amend title 42, United States Code Annotated, section 1971, so as to include within the protection of that section, primaries as well as general elections. This section is also amended, apparently in an attempt to give its application to title 18, United States Code Annotated, section 242, the criminal provision, and title 42, United States Code Annotated, section 1893, the section conferring a civil cause of action for damages. Laying aside the fact that no need for these changes has been shown, the type of legislative drafting here utilized is to be frowned on. If sections 242 of title 18, and 1983 of title 42 are to be amended, they should be amended directly, rather than by adding a catchall clause to the end of another section which makes it almost impossible to predict how these two sections will be interpreted.

The section here amended directly (42 U. S. C. A. 1971), was originally intended only to be a declaration of principle, which would invalidate any State law in conflict therewith, while title 18, United States Code Annotated, section 242, was intended to prescribe a criminal penalty, and title 42, United States Code Annotated, section 1983, was intended to give a civil cause of action.

However, laying aside all other questions, the amendment here sought to be added is not necessary. In *Terry* v. *Adams* ((1953), 343 U. S. 461, 468, 97 L. Ed. 1152, 1160, 73 S. Ct. 809), the Supreme Court has already construed title 42, United States Code Annotated, section 1971, as being applicable to primaries, in a decision which is recognized as going as far as possible in protecting the right to vote without amending the Constitution. Perhaps the Congress, like Mr. Justice Minton and I, believes the Court's decision to have gone too far, but it is strange for Congress, many Members of which have expressed the greatest respect for even the more questionable of the Court's opinions, to now manifest doubt as to the Court's ability by legislating to uphold its decision. Traditionally, under our system of government, the Court decisions have followed the legislation, but apparently some believe that procedure to be old fashioned, and that now, the Courts are empowered to legislate initially to be followed by ratification in the form of congressional enactment.

I have tried to summarize briefly my objections to the proposed legislation. There are many others which time does not permit me to cover. Beyond this, there are undoubtedly many additional quirks and objectionable features which can only be ascertained by judicial application, and particularly is this to be expected from the broad, loose language employed in these bills.

However, the one overriding reason which prompts me to appear here today is my concern for continued existence of this country as one of a National Government with limited powers on one hand, and a union of sovereign States on the

other which are more responsive to the will of the people in the vast majority of governmental affairs which do not require unity of action. This was the formula conceived by the Founding Fathers to preserve our liberties.

All of these bills come before the Congress concealed in a hypocritical cloak of self-righteous and pious protestation against bigotry and prejudice by those pressure groups who would wave the Constitution on high whenever it suits their purpose, but who to achieve this purpose would destroy the Constitution by destroying the States. A leading constitutional scholar from the North has written that the 14th amendment itself was adopted by speeches which "aroused the passions of the people, increased their prejudices and hatred, and appealed to selfish motives," and that all these appeals were clothed in terms of "rights and justice." (See Flack, Adoption of the Fourteenth Amendment, p. 209.)

A study of the many and all-embracing civil rights laws presently on the books will readily demonstrate the absence of need for the proposed legislation. The most far-reaching of these statutes today it title 42, United States Code Annotated, section 1985. So recently as 1951, in *Collins* v. *Hardyman* (341 U. S. 651, 656, 95 L. Ed. 1253, 1257, 71 S. Ct. 937), the Supreme Court criticized the unbalance wrought upon our Federal-State system by this statute in the following language:

"This statutory provision has long been dormant. It was introduced into the Federal statutes by the act of April 20, 1871, entitled 'An act to enforce the provisions of the 14th amendment to the Constitution of the United States, and for other purposes.' The act was among the last of the reconstruction legislation to be based on the 'conquered province' theory which prevailed in Congress for a period following the Civil War.

* * * * * * *

"The act, popularly known as the Ku Klux Act, was passed by a partisan vote in a highly inflamed atmosphere. It was preceded by spirited debate which pointed out its grave character and susceptibility to abuse, and its defects were soon realized when its execution brought about a severe reaction.

"The provision establishing criminal conspiracies in language indistinguishable from that used to describe civil conspiracies came to judgment in *United States* v. *Harris* (106 U. S. 629, 27 L. Ed. 290, 1 S. Ct. 601). It was held unconstitutional. This decision was in harmony with that of other important decisions during that period by a Court, every member of which had been appointed by Presidents Lincoln, Grant, Hayes, Garfield, or Arthur—all indoctrinated in the cause which produced the 14th amendment, but convinced that it was not to be used to centralize power so as to upset the Federal system."

The bills now before this committee would go even further than section 1985. If these measures succeed, it will be only a matter of time before the next move will be Federal legislation touching the substantive law of torts, property, and the administration of estates.

I do not conceive it to be the proper function of this Congress or any other branch of the Federal Government to be constantly sniping at the powers and sovereignty of the States, for it is by their remaining sovereign that the liberties of all our people will be best preserved.

Less than 100 years ago, it was said by Chief Justice Chase in *Texas* v. *White* (7 Wall. 700, 725, 19 L. Ed. 227, 237):

"Not only, therefore, can there be no loss of separate and independent autonomy to the States, through their union under the Constitution, but it may be not unreasonably said that the preservation of the States, and the maintenance of their governments, are as much within the design and care of the Constitution as the preservation of the Union and the maintenance of the National Government. The Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States."

Senator ERVIN. We would be delighted to hear from you at this time.

Mr. BLOCH. Mr. Chairman, when I appeared before the House committee a couple of weeks ago, I prefaced my afternoon remarks with the statement, a story that they tell about a Georgia lawyer, a distinguished lawer from my town, who was arguing a case before the supreme court of Georgia, and one of the justices asked him a question and apologized to him for asking the question, and the lawyer said,

"I relish questions. It is a clash of mind on mind which causes the spark of truth to stimulate."

So as I go along—I have a rather long statement here—as I go along if the gentlemen of the committee would like to ask any questions you can interrupt at any time, and if it is too long in the light of the fact that there are not very many of us here, I mean very many of you here on the committee, I will be glad to shorten it in any way that the Chair might indicate should be done.

Senator ERVIN. Having such a profound confidence in your knowledge as a constitutional lawyer, I would not want you to shorten it as far as I am concerned.

Mr. BLOCH. I will just go along then.

My name is Charles J. Bloch. I am a lawyer of Macon, Ga. I was born in Baton Rouge, La. in 1893. I have lived in Macon since 1901, and practiced law there since 1914.

I have been president of the Georgia Bar Asociation—1944 to 1945. I have been treasurer of its Students' Loan Commission since 1941. I am chairman of the Judicial Council of Georgia, and have been so practically since its creation in 1945. I have been a member of the board of regents of the University System of Georgia since 1950, and am now chairman of its committee on education.

I am also first vice president of the States Rights Council of Georgia.

I am her on behalf of the great majority of the people of Georgia, at the request of our Governor, in opposition to certain bills pending before your committee, particularly a bill designated as "Subcommittee print, January 31, 1957" and Senate bill 83, which I understand to be the administration bill.

Before proceeding to discuss the details of these bills, and to point out to you features of them which we think violate the Constitution of the United States, and certainly are deterrent to the growth of this Nation, I say to you that we of the South hold passionately to a certain conviction—a conviction that the Constitution of the United States as written, and as construed over scores of years, is the supreme law of the land, and that Constitution can only be amended as provided there.

It cannot constitutionally and legally be amended by what I have recently heard called an enactment of the Supreme Court.

I say to you, too, that I do not think that we of the South stand alone in this fundamental conviction. We are not race-baiters. We are not Negro haters. We do believe that the Constitution of the United States was a compact between the States, to be obeyed, if this Government is to survive, but not to be amended except as provided by its specific language.

To so-called segregation decisions of May 17, 1954, marked a drastic departure from what we thought were fundamental, settled, fixed, immutable principles of constitutional law. The measures before you, in my opinion, stem from the departure of May 17, 1954, and are pressed, in my opinion, on the theory that the Court having departed once, will depart again, and again, and again.

It is not amiss, therefore, for me to discuss with you Georgia's views on that decision, and express to you the hope that instead of pressing for unconstitutional, unwise legislation, you cooperate with us in securing a reversal of that decision.

We are repeatedly told that the decisions of May 17, 1954, are the "law of the land." The line is that we of the South are violating the "law of the land" when we do not supinely bow to these decisions. We do not bow to them because we do not think they have the force and effect of amendments to the Constitution. We do not think that they are a part of our organic law. Under Federal Rules of Civil Procedure they are binding on the parties to them. They may be binding as precedents on lower courts, but there is nothing immutable, sacred about them.

Georgia's position with respect to these decisions can only be understood if one knows facts of American history.

The first settlement of English-speaking people on these shores was at Jamestown, Va., in 1607. Colonists from England, and other Western European countries, proceeded to settle from Massachusetts on the North through Georgia on the South.

Strange as it may seem to us today, slavery was prevalent—human slavery. People, human beings, captured on African shores, were brought by slave traders to these shores.

Those slave traders were for the most part not Southerners. The owners of the vessels in which the trade was plied were not Southerners. Most of the slaves which these people from other sections of the continent brought in were sold into the South on account of its climate, and on account of the fact that they could best work in open fields—in agriculture.

(See Tilley, p. 32.)

Years passed. The numbers of these slaves increased. The War of the Revolution ensued. The Thirteen American Colonies became 13 American States who combined to form the United States of America. Eight years passed after the surrender at Yorktown before these Thirteen Original States in 1789 combined to form the United States of America, and to adopt the Constitution of the United States.

Slavery did not cease with the formation of the United States of America. On the contrary, at least four times in that document was the institution of slavery recognized as legal—most especially do I point out to you that provision of the Constitution (art. I, sec. 9) providing that the—

> migration or importation of such persons as any of the States now existing shall think proper to admit shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The constitutional provision assured slave traders, and the owners of slave-trading vessels—not Southerners, for the most part—that their trade, their investment would not be disturbed for 20 years. That provision recognized these poor human beings as chattels, as property, and taxable as such.

To be sure that such remained the law, the Constitution also provided in article V that no amendment should be made prior to 1808 which should in any manner affect the provision of article I, section 9 to which I have alluded. (See also art. V, sec. 2.)

By an act of Congress of April 20, 1817 (3 Stat. 450), Congress enacted a statute prohibiting the importation of slaves. (For a history of the legislation prohibiting the slave trade, see *United States* v. *Libby*, Federal cases, No. 15597, and The Garconne, 36 U. S. 73.)

As abhorrent as the idea is to us of today, in 1850, slavery was recognized as legal by the Supreme Court of the United States. (*Strader* v. *Graham*, 51 U. S. (10 How.) 82, 93.)

Slaves were property. They were traded in as such. Investments to the extent of many millions of dollars had been made in them.

The 20-year period provided in the Constitution as a concession to the North ended. The northern and eastern slave traders could no longer legally engage in the slave trade. (Many tried illegally.) (See the case of The Wanderer—The Coming of the Glory, Tilley, pp. 7–8.) The abolitionists began their clamor.

It is striking that the very State which was the focal point of the slave trade was the seat of abolitionism. William Lloyd Garrison in his Boston Liberator proceeded flatly to defy the supreme law of the land with his pronouncement that the immortal document was "a covenant with death and an agreement with hell." John Ford Rhodes, History of the United States, volume I, page 74, cited in Tilley's book, supra, page 33. From 1619 until 1820, 200 years, a traffic in Negroes across the Atlantic was carried on by all the Christian colonial powers. Slavery in the British possessions was abolished in 1838, 20 million pounds sterling being paid in compensation to the slaveholders (The Americana, vol. 25, p. 88).

In 1860, in the convention of a church in New York, a leading member offered a resolution denouncing current brazen nullification of the anti-slave-trade statutes, "with ill-concealed levity his fellow delegates voted it down by a large majority" (Tilley, p. 9, The Coming of the Glory).

The South was then a prosperous, thriving, growing section. The abolitionists' clamor increased day by day. Slavery had become irreligious. There was continued agitation in Congress. The steadfast principle of the South was that slavery was legal, had repeatedly been recognized as such, that no complaint had been made about it as long as the North and East could make money bringing in the slaves and selling them, that whether or not slavery should be abolished was a matter reserved to the States under the 10th amendment.

There was never a sounder legal position. But it could not be settled peaceably. Why it could not is difficult for us of today to understand.

So war, with its desolation and destruction in the South, came. Georgia especially felt the ravages of war in General Sherman's march to the sea. At one time General Lee invaded Pennsylvania.

Senator ERVIN. Mr. Bloch, if I could interrupt you at this point, I would say that North Carolina felt the ravages of war pretty bad also. At that time North Carolina had a total population of around 900,000 people. She sent 125,000 of her sons into the Confederate Army. Of the 125,000 of her sons who went into the Confederate Army, approximately 41,000 of them gave their lives to battle or disease.

In other words, almost 1 person out of each 18 residents of my State died in that unnecessary struggle. That situation was exemplified throughout all of the Southern States.

Mr. BLOCH. Yes, sir.

After General Sherman marched from Atlanta to Savannah, I recall he reached Savannah on Christmas Day, 1864, and wired President Lincoln that he was tendering the city of Savannah as a Christmas

present, he turned north and carried on the desolation and the devastation in South Carolina and in your great State of North Carolina.

At one time General Lee invaded Pennsylvania. There was no such destruction wrought on Pennsylvania, as General Sherman wreaked on Georgia. As a matter of fact there was no destruction wrought on it at all except such as was wrought in the Battle of Gettysburg and the surrounding territory.

During the war (1863), President Lincoln signed the Emancipation Proclamation freeing slaves in certain sections of the South not occupied by Federal troops. Not 1 cent of compensation was paid to the owners. New York, Massachusetts, and other States, in 1864, and thereabouts, passed segregation laws, especially laws providing for segregation in the schools.

In 1865, the war ended with the surrender at Appomattox. Lincoln was assassinated. The reconstruction era began. The States of the South were treated as conquered provinces. The 13th amendment to the Constitution, abolishing slavery, was adopted. No compensation was paid to the slaveholders for their property. Whenever I hear talk of the "law of the land," I wonder how that breach of contract can legally be justified.

The 14th amendment was proposed to the legislatures of the several States of the 39th Congress on June 16, 1866. It was declared ratified July 21, 1868, by the legislatures of 30 of the 36 States. An interesting legal discussion could be had as to whether it ever was legally adopted.

Suffice it now to say that of the 30 States supposed to have ratified it, New Jersey and Ohio subsequently passed resolutions withdrawing their consent to it. Kentucky, Delaware, and Maryland rejected it. It was never ratified by either of these States. (See U. S. C. A. amendment 14, historical note, p. 3.)

The act of April 20, 1871, was passed, entitled "An act to enforce the provisions of the 14th amendment to the Constitution of the United States, and for other purposes."

In 1951, 80 years later, Justice Robert H. Jackson, of New York, said in *Collins* v. *Hardyman* (341 U. S. 651), an action to recover damages under title 8, United States Code, section 47 (3), now title 42, United States Code, section 1985 (3):

> This statutory provision has long been dormant * * * the act was among the last of the reconstruction legislation to be based on the "conquered province" theory which prevailed in Congress for a period following the Civil War * * *. The act, popularly known as the Klu Klux Act, was passed by a partisan vote in a highly inflamed atmosphere.

And I interpolate the importance of this decision is—the importance of Justice Jackson's decision with reference to title 42, United States Code, section 1985 (3)—is that it is that very act or parts of that act which your committee is now asked to revise and amend and revivify.

So a discussion of it, a characterization of it by a distinguished Justice of the Supreme Court of the United States, who was not a southerner, who was reared certainly in the town of Jamestown, N. Y., is certainly not amiss.

The act, popularly known as the Ku Klux Act, was passed by a partisan vote in a highly inflamed atmosphere. It was preceded by spirited debate which pointed out its grave character and susceptibility to abuse and its defects were soon realized when its execution brought about a severe reaction. (The background of this act, the

nature of the debates which preceded its passage, and the reaction it produced, are set forth in Bowers, The Tragic Era, pp. 340–348.) I wish that that whole book, written by that distinguished New York writer, could be made a part of the record of these hearings.

The provision establishing criminal conspiracies in language indistinguishable from that used to describe civil conspiracies came to judgment in *United States* v. *Harris* (106 U. S. 629 (1882)). It was held unconstitutional.

This decision was in harmony with that of other important decisions during that period by a Court, every member of which had been appointed by President Lincoln, Grant, Hayes, Garfield, or Arthur—that act was construted within 15 years after its passage by a Court, the Justices on which, as Justice Jackson points out, were appointed by Presidents Lincoln, Grant, Hayes, Garfield, or Arthur—all indoctrinated with the cause which produced the 14th amendment, but convinced that it was not to be used to centralize power so as to upset the Federal system.

While we have not been in agreement as to the interpretation and application of some of the post-Civil War legislation, the Court recently unanimously declared through the Chief Justice (Vinson):

> Since the decision of this Court in the civil-rights cases (109 U. S. 3 (1883)), the principle has become firmly embedded in our constitutional law that the action inhibited by the first section of the 14th amendment is only such action as may fairly be said to be that of the States. That amendment erects no shield against merely private conduct, however discriminatory or wrongful (341 U. S. 656–658).

What better yardstick could we have than a decision of a Justice of the Supreme Court of the United States applicable to some of the provisions of these statutes?

Senator ERVIN. Some of the proposed legislation evidently proceeds on the theory that the present court is going to strike down some of these old decisions which hold that the 14th amendment cannot be applied to anything except State action. How the present court can be expected to hold that the simple English used in the 14th amendment applies to any action other than that of the State exceeds my comprehension.

Mr. BLOCH. Senator, some of these acts, as you point out, can in no way be construed to be State action. They can only be the action of individuals which is legislated about, and they can only be upheld if 1 of 2 things happen: One, if the Supreme Court of the United States departs from these established landmarks of the law and says that they are no longer the law, and changes its mind about those decisions, or if, as I point out later in this statement, or if the Supreme Court of the United States can be induced to say that these statutes are jusified by another document, to wit: the Charter of the United Nations.

In the early 1870's, the South was prostrate, and prostrated, was used as a whipping boy by radicals for self-aggrandizement. Prostrated it was. Subjugated it was not. We were left to pull ourselves up almost literally by our own bootstraps.

As we climbed back, we began to try to educate our children, and to educate the recently freed colored children in our midst.

In my county of Bibb, there was established the County Board of Education (1872)—just 4 years after the adoption of the 14th amend-

ment, just 7 years after Appomattox, providing in no unmistakable language that in public education—separate schools should be maintained for white and colored children.

Rid of carpetbaggers and scalawags, in 1877 Georgia adopted a Constitution. It provided for the education of the children, but the power was so limited that there must always be separate schools for white and colored children. And, so, the power to levy a tax for the support of the public school system is limited to a power to tax only for separate schools. There is no constitutional power in Georgia—and Senator, this is what bothers us so much about these decisions, there is no constitutional power in Georgia for the levy of a tax for the support of mixed or integrated schools.

These two instances are not unique. Many States and cities throughout the Nation in the years contemporaneous with the adoption of the 14th amendment, adopted similar provisions. (See 345 U. S. 972), in which the Supreme Court on June 8, 1953, less than a year prior to the segregation decisions of May 17, 1954, restored to the docket for reargument, the case of *Gebhardt* v. *Belton*, and asked that the following question, among others, be discussed:

What evidence is there that the Congress which submitted and the State legislatures and conventions which ratified the fourteenth amendment contemplated or did not contemplate, understood or did not understand, that it would abolish segregation in public schools?

There was a load of evidence, literally wagon loads of evidence submitted to the Supreme Court.

Senator ERVIN. As I read it, at least $99^{99}/_{100}$ percent of the historical evidence compels the conclusion that the 14th amendment was never designed to prohibit segregation on the basis of race in the public schools.

Mr. BLOCH. Exactly.

Senator ERVIN. I have been interested in this phase of history ever since my student days at the University of North Carolina, where I sat at the feet of a great historian, Dr. I. G. de R. Hamilton, author of Reconstruction in North Carolina. My study of history has left me with the abiding and profound conviction that there is no substantial historical basis for the factual statement of the Court in the decision of May 17, 1954, that history leaves it "inconclusive" whether the Congress which submitted and the State legislatures which ratified the 14th amendment understood that the amendment would abolish segregation on the basis of race in the public schools.

Mr. BLOCH. When the Court asked that question and got before it the accumulation of evidence, to say the least of it, the evidence was not used in the decision of May 17, 1954.

Senator ERVIN. The Court declared that history left the matter "inclusive" notwithstanding the fact that in the very Congress that submitted the 14th amendment made provision for segregated schools in the District of Columbia, notwithstanding the fact that virtually every Congress from that time down to May 1954 provided for the operation of segregated schools in the District of Columbia, and notwithstanding the fact that throughout the 86 years, from 1868 to 1954, Presidents, Congresses, State governors, State legislatures, and courts, both Federal and State, including the Supreme Court of the United States, held that the 14th amendment permitted segregation on the basis of race in the public schools.

Mr. BLOCH. Thank you, sir, and notwithstanding the fact that in 1864, during the height of the war, just after the Emancipation Proclamation and before the adoption of the 14th amendment, the great State of New York adopted a statute in 1864 providing for segregation in the public schools of certain communities, which was decided by the Supreme Court of New York, the Court of Appeals of New York, which is the court of last resort, in 1883, to be perfectly valid.

The 14th amendment to the Constitution of the United States was notwithstanding, and which as late as 1900 was adhered to by the Court of Appeals of New York at the time that the great Judge Austin B. Parker was chief judge of that court. I will presently allude to those two decisions.

Coming back to a little further discussion of that point, as the South climbed back, *Plessy* v. *Ferguson* (163 U. S. 537), was decided in 1896. It announced the "separate but equal doctrine."

Now here, Senator, is the great importance of that case. While it announced a separate but equal doctrine—one of the great importances of it—in 1896 in a case applicable to railroad transportation, the cases cited in support of the document, in support of the holding, were practically all public school cases, and were practically all public school cases decided by the courts of States other than Southern States.

It cited one North Carolina case I think, and except for that North Carolina case, every decision which is cited was the decision of courts of States which had not been a member of the late Southern Confederacy.

Senator ERVIN. I would like to ask whether your recollection coincides with mine in respect to one of those cases. As I recall, one was a decision which Chief Justice Shaw handed down for the Supreme Judicial Court of the Commonwealth of Massachusetts.

Mr. BLOCH. Yes, sir. I was just about to come to that.

Your recollection, sir, is exactly right. The next sentence in my statement is this: The Supreme Court of the United States did not pull that doctrine out of the air. It was based on the decisions of many State courts, notably *Roberts* v. *Boston* ((Massachusetts) 5 Cushing 198); *People* v. *Gallagher*, (93 New York, 438.)

As the Senator occupying the Chair points out, this *Roberts* v. *The City of Boston* was decided by the Supreme Judicial Court of Massachusetts in 1849. One of counsel for the plaintiff, Roberts, was Senator Sumner, of Massachusetts, of whom we all in the South have heard, whether those in the North have or not.

I am not going to read the whole opinion. I would like to make it a part of the record.

Senator ERVIN. Without objection, it is so ordered.

(The document is as follows:)

SARAH C. ROBERTS v. THE CITY OF BOSTON

NOVEMBER TERM, 1849

The general school committee of the city of Boston have power, under the constitution and laws of this commonwealth, to make provision for the instruction of colored children, in separate schools established exclusively for them, and to prohibit their attendance upon the other schools.

This was an action on the case, brought by Sarah C. Roberts, an infant, who sued by Benjamin F. Roberts, her father and next friend, against the city of Boston, under the statute of 1845, c. 214, which provides that any child, unlaw-

fully excluded from public school instruction in this commonwealth, shall recover damages therefor against the city or town by which such public instruction is supported.

The case was submitted to the court of common pleas, from whence it came to this court by appeal, upon the following statement of facts:

"Under the system of public schools established in the city of Boston, primary schools are supported by the city, for the instruction of all children residing therein between the ages of four and seven years. For this purpose, the city is divided for convenience, but not by geographical lines, into twenty-one districts, in each of which are several primary schools making the whole number of primary schools in the city of Boston one hundred and sixty-one. These schools are under the immediate management and superintendence of the primary school committee, so far as that committee has authority, by virtue of the powers conferred by votes of the general school committee.

"At a meeting of the general school committee, held on the 12th of January 1848, the following vote was passed:

"*Resolved*, that the primary school committee be, and they hereby are, authorized to organize their body and regulate their proceedings as they may deem most convenient; and to fill all vacancies occurring in the same, and to remove any of their members at their discretion during the ensuing year; and that this board will cheerfully receive from said committee such communications as they may have occasion to make."

"The city of Boston is not divided into territorial school districts; and the general school committee, by the city charter, have the care and superintendence of the public schools. In the various grammar and primary schools, white children do not always or necessarily go to the schools nearest their residences; and in the case of the Latin and English high schools (one of each of which is established in the city) most of the children are obliged to go beyond the schoolhouses nearest their residences.

"The regulations of the primary school committee contain the following provisions:

"Admissions. No pupil shall be admitted into a primary school, without a ticket of admission from a member of the district committee.

"Admissions of Applicants. Every member of the committee shall admit to his school, all applicants, of suitable age and qualifications, residing nearest to the school under his charge, (excepting those for whom special provision has been made,) provided the number in his school will warrant the admission.

"Scholars to go to schools nearest their residences. Applicants for admission to the schools, (with the exception and provision referred to in the preceding rule,) are especially entitled to enter the schools nearest to their places of residence."

"At the time of the plaintiff's application, as hereinafter mentioned, for admission to the primary school, the city of Boston had established, for the exclusive use of colored children, two primary schools, one in Belknap street, in the eighth school district, and one in Sun Court street, in the second school district.

"The colored population of Boston constitutes less than one sixty-second part of the entire population of the city. For half a century, separate schools have been kept in Boston for colored children, and the primary school for colored children in Belknap street was established in 1820, and has been kept there ever since. The teachers of this school have the same compensation and qualifications as in other like schools in the city. Schools for colored children were originally established at the request of colored citizens, whose children could not attend the public schools on account of the prejudice then existing against them.

"The plaintiff is a colored child of five years of age, a resident of Boston, and living with her father, since the month of March 1847, in Andover Street, in the sixth primary school district. In the month of April 1847, she being of suitable age and qualifications (unless her color was a disqualification), applied to a member of the district primary school committee, having under his charge the primary school nearest to her place of residence, for a ticket of admission to that school, the number of scholars therein warranting her admission, and no special provision having been made for her, unless the establishment of the two schools for colored children exclusively is to be so considered.

"The member of the school committee, to whom the plaintiff applied, refused her application, on the ground of her being a colored person and of the special provision made as aforesaid. The plaintiff thereupon applied to the primary school committee of the district for admission to one of their schools, and was in

like manner refused admission, on the ground of her color and the provision aforesaid. She thereupon petitioned the general primary school committee for leave to enter one of the schools nearest her residence. That committee referred the subject to the committee of the district, with full powers, and the committee of the district thereupon again refused the plaintiff's application, on the sole ground of color and the special provision aforesaid, and the plaintiff has not since attended any school in Boston. Afterwards, on the 15th of February 1848, the plaintiff went into the primary school nearest her residence, but without any ticket of admission or other leave granted, and was on that day ejected from the school by the teacher.

"The school established in Belknap street is twenty-one hundred feet distant from the residence of the plaintiff, measuring through the streets: and in passing from the plaintiff's residence to the Belknap street school, the direct route passes the ends of two streets in which there are five primary schools. The distance to the school in Sun Court street is much greater. The distance from the plaintiff's residence to the nearest primary school is nine hundred feet. The plaintiff might have attended the school in Belknap street, at any time, and her father was so informed, but he refused to have her attend there.

"In 1846, George Putnam and other colored citizens of Boston petitioned the primary school committee that exclusive schools for colored children might be abolished, and the committee on the 22d of June 1846, adopted the report of a subcommittee, and a resolution appended thereto, which was in the following words:

"*Resolved*, That in the opinion of this board, the continuance of the separate schools for colored children, and the regular attendance of all such children upon the schools, is not only legal and just, but is best adapted to promote the education of that class of our population."

The court were to draw such inferences from the foregoing facts as a jury would be authorized to draw; and the parties agreed that if the plaintiff was entitled to recover, the case should be sent to a jury to assess damages; otherwise the plaintiff was to become nonsuit.

C. Sumner and *R. Morris, Jr.*, for the plaintiff.

Mr. Sumner argued as follows:

1. According to the spirit of American institutions, and especially of the constitution of Massachusetts (Part First, Articles I and VI), all men, without distinction of color or race, are equal before the law.

2. The legislation of Massachusetts has made no discrimination of color or race in the establishment of the public schools. The laws establishing public schools speak of "schools for the instruction of children," generally, and "for the benefit of *all* the inhabitants of the town," not specifying any particular class, color, or race. Rev. Sts. *c.* 23; Colony law of 1647, (Anc. Ch. *c.* 186.) The provisions of Rev. Sts. *c.* 23, § 68, and *St.* 1838, *c.* 154, appropriating small sums out of the school fund, for the support of common schools among the Indians, do not interfere with this system. They partake of the anomalous character of all our legislation with regard to the Indians. And it does not appear, that any separate schools are established by law among the Indians, or that they are in any way excluded from the public schools in their neighborhood.

3. The courts of Massachusetts have never admitted any discrimination, founded on color or race, in the administration of the common schools, but have recognized the equal rights of all the inhabitants. *Commonwealth* v. *Dedham*, 16 Mass. 146; *Withington* v. *Eveleth*, 7 Pick. 106; *Perry* v. *Dover*, 12 Pick. 206, 213.

4. The exclusion of colored children from the public schools, which are open to white children, is a source of practical inconvenience to them and their parents, to which white persons are not exposed, and is, therefore, a violation of equality.

5. The separation of children in the public schools of Boston, on account of color or race, is in the nature of caste, and is a violation of equality.

6. The school committee have no power, under the constitution and laws of Massachusetts, to make any discrimination on account of color or race, among children in the public schools. The only clauses in the statutes, conferring powers on the school committee, are the tenth section of Rev. Sts. *c.* 23, declaring that they "shall have the general charge and superintendence of all the public schools in the town," and the fifteenth section of the same chapter, providing that they "shall determine the number and qualifications of the scholars, to be admitted into the school kept for the use of the whole town." The power to determine the "qualifications" of the scholars must be restrained to the qualifi-

cations of age, sex, and moral and intellectual fitness. That fact, that a child is black, or that he is white, cannot of itself be considered a qualification, or a disqualification.

The regulations and by-laws of municipal corporations must be reasonable, or they are inoperative and void. *Commonwealth* v. *Worcester*, 3 Pick. 462; *Vandine's Case*, 6 Pick. 187; *Shaw* v. *Boston*, 1 Met. 130. So, the regulations and by-laws of the school committee must be reasonable; and their discretion must be exercised in a reasonable manner. The discrimination made by the school committee of Boston, on account of color, is not legally reasonable. A colored person may occupy any office connected with the public schools, from that of governor, or secretary of the board of education, to that of member of a school committee; or teacher in any public school, and as a voter he may vote for members of the school committee. It is clear, that the committee may classify scholars, according to age and sex, for these distinctions are inoffensive, and recognized as legal (Rev. Sts. c. 23 § 63); or according to their moral and intellectual qualifications, because such a power is necessary to the government of schools. But the committee cannot assume, without individual examination, that an entire race possess certain moral or intellectual qualities, which render it proper to place them all in a class by themselves.

But it is said, that the committee, in thus classifying the children, have not violated any principle of equality, inasmuch as they have provided a school with competent instructors for the colored children, where they enjoy equal advantages of instruction with those enjoyed by the white children. To this there are several answers: 1st. The separate school for colored children is not one of the schools established by the law relating to public schools (Rev. Sts. c. 23) and having no legal existence, cannot be a legal equivalent. 2d. It is not in fact an equivalent. It is the occasion of inconveniences to the colored children, to which they would not be exposed if they had access to the nearest public schools; it inflicts upon them the stigma of caste; and although the matters taught in the two schools may be precisely the same, a school exclusively devoted to one class must differ essentially, in its spirit and character, from that public school known to the law, where all classes meet together in equality. 3d. Admitting that it is an equivalent, still the colored children cannot be compelled to take it. They have an equal right with the white children to the general public schools.

7. The court will declare the bylaw of the school committee, making a discrimination of color among children entitled to the benefit of the public schools, to be unconstitutional and illegal, although there are no express words of prohibition in the constitution and laws. Slavery was abolished in Massachusetts, by virtue of the declaration of rights in our constitution, without any specific words of abolition in that instrument, or in any subsequent legislation. *Commonwealth* v. *Aves*, 18 Pick. 193, 210. The same words, which are potent to destroy slavery, must be equally potent against any institution founded on caste. And see *Shaw* v. *Boston*, 1 Met. 130, where a bylaw of the city was set aside as unequal and unreasonable, and therefore void. If there should be any doubt in this case, the court should incline in favor of equality; as every interpretation is always made in favor of life and liberty. Rousseau says that "it is precisely because the force of things tends always to destroy equality, that the force of legislation ought always to tend to maintain it." In a similar spirit the court should tend to maintain it.

The fact, that the separation of the schools was originally made at the request of the colored parents, cannot affect the rights of the colored people, or the powers of the school committee. The separation of the schools, so far from being for the benefit of both races, is an injury to both. It tends to create a feeling of degradation in the blacks, and of prejudice and uncharitableness in the whites.

P. W. Chandler, city solicitor, for the defendants.

The opinion was delivered at the March term, 1850.

SHAW, C. J. The plaintiff, a colored child of five years of age, has commenced this action, by her father and next friend, against the city of Boston, upon the statute of 1845, c. 214, which provides, that any child unlawfully excluded from public school instruction, in this commonwealth, shall recover damages therefor, in an action against the city or town, by which such public school instruction is supported. The question therefore is, whether, upon the facts agreed, the plaintiff has been unlawfully excluded from such instruction.

By the agreed statement of facts, it appears, that the defendants support a class of schools called primary schools, to the number of about one hundred and

sixty, designed for the instruction of children of both sexes, who are between the ages of four and seven years. Two of these schools are appropriated by the primary school committee, having charge of that class of schools, to the exclusive instruction of colored children, and the residue to the exclusive instruction of white children.

The plaintiff, by her father, took proper measures to obtain admission into one of these schools appropriated to white children, but pursuant to the regulations of the committee, and in conformity therewith, she was not admitted. Either of the schools appropriated to colored children was open to her the nearest of which was about a fifth of a mile or seventy rods more distant from her father's house than the nearest primary school. It further appears, by the facts agreed, that the committee having charge of that class of schools had, a short time previously to the plaintiff's application, adopted a resolution, upon a report of a committee, that in the opinion of that board, the continuance of the separate schools for colored children, and the regular attendance of all such children upon the schools, is not only legal and just, but is best adapted to promote the instruction of that class of the population.

The present case does not involve any question in regard to the legality of the Smith school, which is a school of another class, designed for colored children more advanced in age and proficiency; though much of the argument, affecting the legality of the separate primary schools, affects in like manner that school. But the question here is confined to the primary schools alone. The plaintiff had access to a school, set apart for colored children, as well conducted in all respects, and as well fitted, in point of capacity and qualification of the instructors, to advance the education of children under seven years old, as the other primary schools; the objection is, that the schools thus open to the plaintiff are exclusively appropriated to colored children, and are at a greater distance from her home. Under these circumstances, has the plaintiff been unlawfully excluded from public school instruction? Upon the best consideration we have been able to give the subject, the court are all of opinion that she has not.

It will be considered, that this is a question of power, or of the legal authority of the committee intrusted by the city with this department of public instruction; because, if they have the legal authority, the expediency of exercising it in any particular way is exclusively with them.

The great principle, advanced by the learned and eloquent advocate of the plaintiff, is, that by the constitution and laws of Massachusetts, all persons without distinction of age or sex, birth or color, origin or condition, are equal before the law. This, as a broad general principle, such as ought to appear in a declaration of rights, is perfectly sound; it is not only expressed in terms, but pervades and animates the whole spirit of our constitution of free government. But, when this great principle comes to be applied to the actual and various conditions of persons in society, it will not warrant the assertion, that men and women are legally clothed with the same civil and political powers, and that children and adults are legally to have the same functions and be subject to the same treatment; but only that the rights of all, as they are settled and regulated by law, are equally entitled to the paternal consideration and protection of the law, for their maintenance and security. What those rights are, to which individuals, in the infinite variety of circumstances by which they are surrounded in society, are entitled, must depend on laws adapted to their respective relations and conditions.

Conceding, therefore, in the fullest manner, that colored persons, the descendants of Africans, are entitled by law, in this commonwealth, to equal rights, constitutional and political, civil and social, the question then arises, whether the regulation in question, which provides separate schools for colored children, is a violation of any of these rights.

Legal rights must, after all, depend upon the provisions of law; certainly all those rights of individuals which can be asserted and maintained in any judicial tribunal. The proper province of a declaration of rights and constitution of government, after directing its form, regulating its organization and the distribution of its powers, is to declare great principles and fundamental truths, to influence and direct the judgment and conscience of legislators in making laws, rather than to limit and control them, by directing what precise laws they shall make. The provision, that it shall be the duty of legislatures and magistrates to cherish the interests of literature and the sciences, especially the university at Cambridge, public schools, and grammar schools, in the towns, is precisely of this character. Had the legislature failed to comply with this injunction, and neglected to provide public schools in the towns, or should they so far fail in their duty as to repeal all laws on the subject, and leave all education to depend on

private means, strong and explicit as the direction of the constitution is, it would afford no remedy or redress to the thousands of the rising generation, who now depend on these schools to afford them a most valuable education, and an introduction to useful life.

We must then resort to the law, to ascertain what are the rights of individuals, in regard to the schools. By the Rev. Sts. c. 23, the general system is provided for. This chapter directs what money shall be raised in different towns, according to their population; provides for a power of dividing towns into school districts, leaving it however at the option of the inhabitants to divide the towns into districts, or to administer the system and provide schools, without such division. The latter course has, it is believed, been constantly adopted in Boston, without forming the territory into districts.

The statute, after directing what length of time schools shall be kept in towns of different numbers of inhabitants and families, provides (§ 10) that the inhabitants shall annually choose, by ballot, a school committee, who shall have the general charge and superintendance of all the public schools in such towns. There being no specific direction how schools shall be organized; how many schools shall be kept; what shall be the qualifications for admission to the schools; the age at which children may enter; the age to which they may continue; these must all be regulated by the committee, under their power of general superintendence.

There is, indeed, a provision (§§ 5 and 6,) that towns may and in some cases must provide a high school and classical school, for the benefit of all the inhabitants. It is obvious how this clause was introduced; it was to distinguish such classical and high schools, in town districted, from the district schools. These schools being a higher character, and designed for pupils of more advanced age and greater proficiency, were intended for the benefit of the whole of the town, and not of particular districts. Still it depends upon the committee, to prescribe the qualifications, and make all the reasonable rules, for organizing such schools and regulating and conducting them.

The power of general superintendence vests a plenary authority in the committee to arrange, classify, and distribute pupils, in such a manner as they think best adapted to their general proficiency and welfare. If it is thought expedient to provide for very young children, it may be, that such schools may be kept exclusively by female teachers, quite adequate to their instruction, and yet whose services may be obtained at a cost much lower than that of more highly-qualified male instructors. So if they should judge it expedient to have a grade of schools for children from seven to ten, and another for those from ten to fourteen, it would seem to be within their authority to establish such schools. So to separate male and female pupils into different schools. It has been found necessary, that is to say, highly expedient, at times, to establish special schools for poor and neglected children, who have passed the age of seven, and have become too old to attend the primary school, and yet have not acquired the rudiments of learning, to enable them to enter the ordinary schools. If a class of youth, of one or both sexes, is found in that condition, and it is expedient to organize them into a spearate school, to receive the special training, adapted to their condition, it seems to be within the power of the superintending committee, to provide for the organization of such special school.

A somewhat more specific rule, perhaps, on these subjects, might be beneficially provided by the legislature; but yet, it would probably be quite impracticable to make full and precise laws for this purpose, on account of the different condition of society in defferent towns. In towns of a large territory, over which the inhabitants are thinly settled, an arrangement of classification going far into detail, providing different schools for pupils of different ages, of each sex, and the like, would require the pupils to go such long distances from their homes to the schools, that it would be quite unreasonable. But in Boston, where more than one hundred thousand inhabitants live within a space so small, that it would be scarcely an inconvenience to require a boy of good health to traverse daily the whole extent of it, a system of distribution and classification may be adopted and carried into effect, which may be useful and beneficial in its influence on the character of the schools, and in its adaptation to the improvement and advancement of the great purpose of education, and at the same time practicable and reasonable in its operation.

In the absence of special legislation on this subject, the law has vested the power in the committee to regulate the system of distribution and classification; and when this power is reasonably exercised, without being abused or perverted by colorable pretenses, the decision of the committee must be deemed conclusive The committee, apparently upon great deliberation, have come to the conclusion,

that the good of both classes of schools will be best promoted, by maintaining the separate primary schools for colored and for white children, and we can perceive no ground to doubt, that this is the honest result of their experience and judgment.

It is urged that this maintenance of separate schools tends to deepen and perpetuate the odious distinction of caste, founded in a deep-rooted prejudice in public opinion. This prejudice, if it exists, is not created by law, and probably cannot be changed by law. Whether this distinction and prejudice, existing in the opinion and feelings of the community, would not be as effectually fostered by compelling colored and white children to associate together in the same schools, may well be doubted; at all events, it is a fair and proper question for the committee to consider and decide upon, having in view the best interests of both classes of children placed under their superintendence, and we cannot say, that their decision upon it is not founded on just grounds of reason and experience, and in the results of a discriminating and honest judgment.

The increased distance, to which the plaintiff was obliged to go to school from her father's house, is not such, in our opinion, as to render the regulation in question unreasonable, still less illegal.

On the whole the court are of opinion, that upon the facts stated, the action cannot be maintained.

Plaintiff nonsuit.

Mr. BLOCH. But I would like to point out one statement in the opinion at page 206 of the official report, and this was in 1849:

The great principle advanced by the learned and eloquent advocate of the plaintiff—

and that is referring to Senator Sumner—

is that by the constitution and laws of Massachusetts, all persons without distinction of age or sex, birth or color, origin or condition, are equal before the law. This is a broad general principle such as ought to appear in the Declaration of Rights and is perfectly sound. It is not only expressed in terms but pervades and animates the whole spirit of our Constitution of free government. But when this great principle comes to be applied to the actual and various conditions of persons in society, it will not warrant the assertion that men and women are legally clothed with the same civil and political powers, and that children and adults are legally to have the same functions and be subject to the same treatment.

But only that the rights of all as they are settled and regulated by law are equally entitled to the paternal consideration and protection of the law for their maintenance and security. What those rights are, to which individuals and the infinite variety of circumstances by which they are surrounded in the society are entitled must depend on laws adapted to their respective relations and conditions.

And then he says at page 209:

In the absence of special legislation on this subject, the law has vested the power in the committee to regulate the system of distribution and classification, and when this power is reasonably exercised without being abused or prevented by colorable pretenses, the decision of the committee must be deemed conclusion.

It is urged that this maintenance of separate schools tends to deepen and perpetuate the odious distinction of caste founded in a deep-rooted prejudice in public opinion. This prejudice, if it exists, is not created by law and probably cannot be changed by law. Whether this distinction in prejudice existed in the opinion in feelings of the community would not be as effectually fostered by compelling colored and white children to associate together in the same schools may well be doubted;

And so on.

Now that comes, I repeat, not from a Georgia judge, not from a North Carolina judge, but from a justice of the Supreme Court of Massachusetts.

And, sir, the Gallagher case decided in 1883—when I read these cases in a gathering not long ago someone made the remark under their breath "Horse and buggy days" but the Constitution, gentlemen, was the same.

Mr. SLAYMAN. Excuse me, Mr. Bloch, that was the Roberts case?

Mr. BLOCH. The first case I read was the Roberts case. Of course, at the time of the Roberts decision, the 14th amendment had not been adopted. That was before the Civil War, the War Between the States, whichever you prefer.

But the people on the relation of *King* v. *Gallagher* was decided by the court of appeals in New York in 1883, and here is what they say—I won't read it all. I will ask leave to put it in the record.

Senator ERVIN. Without objection, the whole decision will be included in the record.

(The document referred to above is as follows:)

THE PEOPLE, EX REL. THERESA B. KING, BY GUARDIAN, ETC., APPELLANT, v. JOHN GALLAGHER, PRINCIPAL, ETC., RESPONDENT

STATEMENT OF CASE

October 1883

Under the provisions of the Common School Act of 1864 (§ 1, tit. 10, chap. 555, Laws of 1864) authorizing the establishment of separate schools for the education of the colored race, in cities and incorporated villages, the school authorities therein have power, when, in their opinion, the interests of education will be promoted thereby, to establish schools for the exclusive use of colored children; and when such schools are established and provided with equal facilities for education, they may exclude colored children from the schools provided for the whites (DANFORTH and FINCH, JJ., dissenting).

The same power is given to the board of education of the city of Brooklyn by the acts relating to the public schools of that city (Chap. 143, Laws of 1850; § 1, tit. 10, chap. 863, Laws of 1873). (DANFORTH and FINCH, JJ., dissenting.)

The establishment of such separate schools for the exclusive use of the different races is not an abridgement of the "privileges or immunities" preserved by the fourteenth amendment of the Federal Constitution, nor is such a separation a denial of the equal protection of the laws given to every citizen by aid amendment.

The said statutory provisions, therefore, were not abrogated by said amendment (DANFORTH and FINCH, JJ., dissenting).

It seems that the "privileges and immunities" which are protected by said amendment are those only which belong to the citizen as a citizen of the United States; those which are granted by a State to its citizens and which depend solely upon State laws for their origin and support are not within the constitutional inhibition, and may lawfully be denied to any class or race by the State at its will and discretion (DANFORTH and FINCH, JJ., dissenting).

It seems, also, that as the privilege of receiving an education at the expense of the State is created and conferred only by State laws, it may be granted or refused to any individual or class at the pleasure of the State (DANFORTH and FINCH, JJ., dissenting).

Said statutory provisions were not repealed by the Civil Rights Act of 1873 (Chap. 186, Laws of 1873); they do not deprive colored persons of the "full and equal enjoyment of any accommodation, advantage, facility or privilege," within the meaning of said act; nor do they discriminate in any manner against them (DANFORTH and FINCH, JJ., dissenting).

All that is required by said act, or by the constitutional amendment, if applicable, is the privilege of obtaining an education under the same advantages, and with equal facilities, as those enjoyed by any other individual. Equality, and not identity of rights and privileges, is what is guaranteed to the citizen (DANFORTH and FINCH, JJ., dissenting).

Board of Education v. *Tinnon* (26 Kans. 1), *Clark* v. *Board of Directors, etc.* (24 Iowa, 266), *Smith* v. *Directors, etc.* (40 id. 518), *Dove* v. *Ind. School Dist.* (41 id. 689), *People, ex rel. Longress*, v. *Board of Education* (101 Ill. 308; 40 Am. Rep. 196), *People* v. *Board of Education* (18 Mich. 400), *C. R. R. Co.* v. *Green* (86 Penn. St. 421; 27 Am. Rep. 718), *Decuir* v. *Benson* (27 La. Ann. 1), *Donnell* v. *State* (48 Miss. 680; 12 Am. Rep. 375), *Coger* v. *N. W. Union Packet Co.* (37 Iowa, 145), *R. R. Co.* v. *Brown* (17 Wall. 446), *Strauder* v. *W. Va.* (100 U. S. 303), distinguished.

(Argued June 18, 1883; decided October 9, 1883.)

APPEAL from order of the General Term of the City Court of Brooklyn, which affirmed an order of Special Term denying a motion for a writ of *mandamus* requiring defendant, as principal of public school No. 5, in the city of Brooklyn, to admit the relator to said school.

The material facts are stated in the opinion.

F. W. Catlin for appellant. Defendant was the proper person against whom to ask for a *mandamus*. (77 N. Y. 503–507; Morse on Banking, 137; *People* v. *Throop*, 12 Wend., 184; High's Extraordinary Legal Remedies, 217, § 311.) The action of the committees of the board of education and the principal of the school in excluding relator on the ground of color was unauthorized. (Laws of 1850, chap. 143, § 6; *Thompson* v. *Schermerhorn*, 6 N. Y. 92; *Birdsall* v. *Clark*, 73 id. 73; *People* v. *Throop*, 12 Wend., 184; *People* v. *Board of Education*, 18 Mich. 400; *Ward* v. *Flood*, 48 Cal. 36; 17 Am. Rep. 405; *Dallas* v. *Fosdick*, 40 How. Pr. 254; *Cory* v. *Carter*, 48 Ind. 327; 17 Am. Rep. 738; *Beaty* v. *Knowles*, 4 Pet. 152; *Wright* v. *Briggs*, 2 Hill, 77; *People* v. *Lambier*, 5 Den. 9; *Sharp* v. *Spier*, 4 Hill, 76.) The prohibitions of the fourteenth amendment are addressed to the States, and have the effect of invalidating any State law in conflict with them. (*Ex parte Virginia*, 10 Otto, 339–346; *Virginia* v. *Rives*, id. 313–318; *Neal* v. *Delaware*, 13 id. 370; *Strauder* v. *W. Virginia*, 10 id. 303, 309; *Slaughter-House Cases*, 16 Wall. 36; *Board of Education* v. *Tinnon*, 25 Alb. L. J. 289; *R. R. Co.* v. *Brown*, 17 Wall. 446; *Board of Education* v. *Tinnon*, 26 Kans. 1; 25 Alb. L. J. 289.) The Civil Rights Act of this State, passed in 1873 (Chap. 186) repealed and annulled any law existing at the date of its passage, if any then existed, which authorized the exclusion of children from the public schools, or discrimination against them, solely on account of color. (Comm. on Written Laws, §§ 82, 192; *Board of Education* v. *Tinnon*, 26 Kans. 1; 25 Alb. L. J. 288; *Clark* v. *Board of Directors*, 24 Iowa, 266; *Smith* v. *Directors*, 40 id. 518; *Dove* v. *School District*, 41 id. 689; *People, ex rel.*, v. *Board of Education*, 101 Ill. 308; *People* v. *Board of Education*, 18 Mich. 400; *Cent. R. R. Co.* v. *Green*, 86 Penn. St. 421; *Decuir* v. *Benson*, 27 La. Ann. 1; *Donnell* v. *State*, 48 Miss. 680; *Coger* v. *Un. Packet Co.*, 37 Iowa, 145.)

F. E. Dana for respondent. The granting of a writ of *mandamus* is in the discretion of the court to which the application is made. (*Matter of Sage*, 70 N. Y. 220; *People ex rel. Faile*, v. *Ferris*, 76 id. 326; *Matter of Gardner*, 68 id. 467; *Ex parte Fleming*, 4 Hill, 581; *People* v. *Common Council*, 78 N. Y. 56; *Van Rensselaer* v. *Sheriff*, 1 Cow. 501; *People* v. *Contracting B'd*, 27 N. Y. 378.) It will issue only in a case of clear and not of doubtful right. (*Matter of Gardner*, 68 N. Y. 467; *People* v. *Croton Aqueduct*, 49 Barb. 259; *Reeside* v. *Walker*, 11 How. [U. S.] 272; *People* v. *Leonard*, 74 N. Y. 443; *People* v. *Common Council*, 78 id. 56.) Generally it will not issue when the relator has a legal remedy by action for damages. (*Matter of Gardner*, 68 N. Y. 467; *People* v. *Sup'v'rs*, 11 id. 563; *People* v. *Mayor*, 10 Wend. 393; *People* v. *Easton*, 13 Abb. [N. S.] 159; *Robinson* v. *Chamberlain*, 34 N. Y. 389; *Howland* v. *Eldridge*, 43 id. 457; *Oneida C. P.* v. *People*, 18 Wend. 79; *People* v. *Leonard*, 74 N. Y. 443; *People* v. *Common Council of Troy*, 78 id. 33.) This proceeding was improperly brought against the respondent, who was but a mere employe of the board of education of the city of Brooklyn. (*Matter of Gardner*, 68 N. Y. 467.) The board of education had the right to establish separate schools for colored children and to assign colored children living contiguously thereto to attend them. (Laws of 1873, chap. 420; Laws of 1864, chap. 555, § 12; Laws of 1850, chap. 143, § 4; Laws of 1843, chap. 63; Laws of 1845, chap. 306; Laws of 1849, chap. 140; Laws of 1864, chap. 155, title 13, § 14; title 7, article 5, § 39; Gilmour's Code Public Instruction, 385.) Neither the Constitution nor the fourteenth amendment affects the rights of the relator or apply to this case. (*Slaughter-House Cases*, 16 Wall. 36; *Hall* v. *DeCuir*, 5 Otto, 485; *Missouri* v. *Lewis*, 101 U. S. 22; *People* v. *Easton*, 13 Abb. [N. S.] 159; *State* v. *McCann*, 21 Ohio, 198; *Cory* v. *Carter*, 17 Am. Rep. 738, 766; Acts session, 1, 39 Cong. 222, July 23, 1866; Acts session 1, 39 Cong. 354, July 28, 1866; Acts session 3, 42 Cong. 260, March 3, 1873; *Wood* v. *Flood*, 17 Am. Rep. 405; *Dallas* v. *Fosdick*, 40 How. 249; *State* v. *Duffy*, 8 Am. Rep. 713; Roome's Law of Corporations, § 323; 10 Federal Reporter, 730; *Roberts* v. *City of Boston*, 59 Mass. 198; *B'd of Edn. of Ottowa* v. *Turner*, 25 Alb. L. J. 288.) The act of 1873 (Chap. 186), known as the Civil Rights Act does not interfere with the right of the board of education to establish colored schools and assign colored children thereto. (*People, ex rel. Johnson*, v. *Welch*, Sept., 1875, MSS. op.; *People* v. *Easton*, 13 Abb. [N. S.] 159.)

RUGER, Ch. J. The relator applied to the court below at a Special Term of the City Court of Brooklyn for a writ of *mandamus* against the respondent, then the

principal of public school No. 5 of that city, after a refusal, to compel him to admit her to the privileges of a pupil at such school, which application was denied. This appeal is brought from the affirmance of such decision by the General Term of that court.

The relator is a colored female about twelve years of age, residing in public school district No. 5, of the city of Brooklyn, and would be entitled to attend that school but for the regulations of its board of education. By such regulations, schools for the exclusive use of its colored population of equal grade and educational advantages with its other schools were established at convenient and accessible points, and the colored children residing in said city were duly assigned to the respective schools provided for them. One of these schools, and being that which the relator was assigned to attend, was located in the same school district in which she resided.

These schools have been presumably established and conducted for a period of years, and their adaptation to the accomplishment of the most efficient purposes of education has been subjected to the test of actual experiment and trial without any claim being made but that the system adopted has contributed to the best interests of both classes. The relator, however, complains, not but that she is receiving the highest educational advantages that the city is capable of giving her, but that she is not receiving those facilities at the precise place which would be the most gratifying to her feelings.

The question broadly stated presented by this appeal is whether the school authorities of that city have the right to classify he pupils in such schools in the administration of their authority to regulate the methods of education pursued therein, or whether the provisions of the Constitution of the United Sates require that each person attending such school, shall, without regard to sex, color or age, be awarded upon demand the same privileges in the same places and under the same circumstances as those enjoyed by any other scholar therein.

Such school authorities have determined, in the exercise of their discretion, that the interests of education may be best promoted by the instruction of scholars of different races in separate schools; and the question is now presented whether they are debarred by the law of the land from adopting those methods which in their judgment are the wisest and most efficient to accomplish the purpose intended.

Under our common school system its supervising authorities are necessarily invested with the exclusive right of determining all such questions as pertain to the exercise of the discretionary powers conferred upon them, and the natural and legal presumption in favor of the conscientious performance of official duty requires us to assume, in the absence of any evidence to the contrary, that the classification in question inures to the educational advantage of the community.

That our common school system should be administered to the best advantage for all interests the most casual reflection as well as the uniform practice in educational institutions shows that its school authorities should be vested with large discretionary power in arranging and classifying the various departments of public instruction, to adapt them to the diversified capacity, disposition and needs of the numerous persons they are required to govern and instruct, and any arbitrary interference with the exercise of such discretion, it is obvious, must be productive of injury to the cause of education.

It would be unfortunate if it should be found that any imperative rule of law prevents those who are charged with the management of the common schools of the State, from adopting such arrangements for instruction as their experience had shown to be adapted to the highest educational interests of the people. Upon referring to the various statutes on the subject, we find that the regulations referred to are fully authorized by the laws of this State relating to the management and control of its public common schools. Section 1 of title 10 of chapter 555 of the Laws of 1864 specially provides for the establishment of separate schools for the education of the colored race, in all of the cities and villages of the State, wherever the school authorities of such city or village may deem it expedient to do so. The act containing this provision has been, since its enactment, frequently before the legislature for amendment, and the provision in question has apparently been frequently approved by them, and now remains unchanged. The system of authorizing the education of the two races separately has been for many years the settled policy of all departments of the State government, and it is believed obtains very generally in the States of the Union.

The common schools of Brooklyn are organized and conducted under a special act relating to that city, contained in chapter 143 of the Laws of 1850, which confers upon the board of education of such city "the entire charge and

direction of all its public schools," and the right to "make its own by-laws, keep a journal of its proceedings, define the duties of its officers and committees and prescribe such rules and regulations for instruction and discipline in the said public schools as are not inconsistent with the laws of the State." Section 4 of this act reads as follows: "The board of education shall have power to organize and establish schools for colored children, and such evening schools as it may from time to time deem expedient, and shall adopt the necessary rules for the government of the same." "No person shall be prohibited from attending the evening schools on account of age."

The powers conferred upon the board of education by this act were, by section 1, title 16, chapter 863 of the Laws of 1873, made applicable to the reorganized department of public institutions for such city, created by said act.

This law has, therefore, been in existence for over thirty years, and its operation and effect have hitherto been found unobjectionable and apparently satisfactory to all parties. It thereby appears that the board of education of Brooklyn possesses full legislative authority, in the exercise of its discretionary powers, to maintain separate schools for the education of white and colored children in that city, and the consequent power to render effectual, by the exclusion of one class from the schools designed for the other, of the discretion in regard to that subject which is conferred upon them by the statute. All of the powers necessary to accomplish the object which the legislature had in view in authorizing separate places of education for individuals of different color must be intended to have been granted when the authority to establish such schools was conferred.

The mere rights of establishing such separate schools, stripped of the power of determining the persons who might or might not attend them, would be a barren power, productive of no beneficial result, and destructive of the effect of the legislation referred to.

Neither is there any force in the claim made by the relator, that the act excluding her from common school No. 5 was not the act of the board of education of Brooklyn. Such a claim is not made in the petition or affidavit upon which her application is founded, and the case was heard upon the return of the respondent, in which it was distinctly asserted that the exclusion of the petitioner from public school No. 5 was effected in pursuance of the orders and instructions of the board of education of the city of Brooklyn. This statement was not controverted by the petitioner, and for the purposes of this appeal must be assumed to be true.

Having seen that the action of the respondent under the authority of the board of education, in excluding the relator from the school for white children, was justified by the statute of this State, it remains only to inquire whether such statutes have been repealed by the legislature, or annulled by the paramount authority of the Constitution of the United States. It is claimed by the counsel for the relator that these statutes have been abrogated by the adoption of the fourteenth amendment to thte Federal Constitution, which took effect in July, 1868. The determination of this appeal depends mainly upon the effect to be given to the provisions of this amendment. It reads 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." On the 20th day of March, 1870, a further amendment to the Federal Constitution was adopted, which provided 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."

The argument of the appellant's counsel is to the effect that the fourteenth amendment, under the laws of this State, giving equal privileges in its common schools to every citizen, confers upon the relator not only the right of equal educational facilities with white children, but that such education shall be furnished at the same time and place with that afforded to any other child, otherwise it is claimed that she is abridged of some "privilege or immunity" which of right belongs to her, or that she is denied the equal protection of the law.

The history of this amendment is familiar to all, and for all of the purposes of this argument may be briefly summarized. At the time of its adoption the colored race had been recently emancipated from a condition of servitude and made citizens of the States. It was apprehended that in some, if not all, of the States of the Union, feelings of antipathy between the races would cause the

dominant race, by unfriendly legislation, to abridge the rights of the other, and deny to them equal privileges and the protection of the laws. To guard the previously subject race from the effect of such discrimination, these provisions are made a part of the fundamental law of the land, and their rights were placed under the protection of the Federal government. Their object has been defined by Mr. Justice STRONG in *Ex parte Virginia* (100 U. S. 344), where it is said that "one great purpose of these amendments was to raise the colored race from that condition of inferiority and servitude, in which most of them had previously stood, into perfect equality of *civil rights* with all other persons within the jurisdiction of the States." The same learned judge in *Strauder* v. *West Virginia* (100 U. S. 306), also says: "It was designed to assure to the colored race the enjoyment of all of 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, when it should be denied by the States."

It will be observed that the language of the amendment is peculiar in respect to the rights which the State is forbidden to abridge. Although the same section makes all persons born or naturalized in the United States, and subject to the jurisdiction thereof, citizens of the United States and of the State wherein they reside, yet, in speaking of the class of privileges and immunities which the State is forbidden to deny the citizen, they are referred to as the privileges and immunities which belong to them as citizens of the United States. It has been argued from this language that such rights and privileges as are granted to its citizens, and depend solely upon the laws of the State for their origin and support, are not within the constitutional inhibition and may lawfully be denied to any class or race by the States at their will and discretion. This construction is distinctly and plainly held in *The Slaughter-House Cases* (16 Wall. 36), by the Supreme Court of the United States. The doctrine of that case has not, to our knowledge, been retracted or questioned by any of its subsequent decisions.

It would seem to be a plain deduction from the rule in that case that the privilege of receiving an education at the expense of the State, being created and conferred solely by the laws of the State, and always subject to its discretionary regulation might be granted or refused to any individual or class at the pleasure of the State. This view of the question is also taken in *State, ex rel. Garnes*, v. *McCann* (21 Ohio St. 210), and *Cory* v. *Carter* (48 Ind. 337; 17 Am. Rep. 738). The judgment appealed from might, therefore, very well be affirmed upon the authority of these cases

But we are of the opinion that our decision can also be sustained upon another ground, and one which will be equally satisfactory as affording a practical solution of the questions involved. It is believed that this provision will be given its full scope and effect when it is so construed as to secure to all citizens, wherever domiciled, equal protection under the laws and the enjoyment of those privileges which belong, as of right, to each individual citizen. This right, as affected by the questions in this case in its fullest sense, is the privilege of obtaining an education under the same advantages and with equal facilities for its acquisition with those enjoyed by any other individual. It is not believed that these provisions were intended to regulate or interfere with the social standing or privileges of the citizen, or to have any other effect than to give to all, without respect to color, age or sex, the same legal rights and the uniform protection of the same laws.

In the nature of things there must be many social distinctions and privileges remaining unregulated by law and left within the control of the individual citizens, as being beyond the reach of the legislative functions of government to organize or control. The attempt to enforce social intimacy and intercourse between the races, by legal enactments, would probably tend only to embitter the prejudices, if any such there are, which exist between them, and produce an evil instead of a good result. (*Roberts* v. *City of Boston*, 5 Cush. 198).

As to weather such intercourse shall ever occur must eventually depend upon the operation of natural laws and the merits of individuals, and can exist and be enjoyed only by the voluntary consent of the persons between whom such relations may arise, but this end can neither be accomplished nor promoted by laws which conflict with the general sentiment of the community upon whom they are designed to operate. When the government, therefore, has secured to each of its citizens equal rights before the law and equal opportunities for improvement and progress, it has accomplished the end for which it is organized and performed all of the functions respecting social advantages with which it is endowed.

The design of the common school system of this State is to instruct the citizen, and where, for this purpose, they have placed within his reach equal means of acquiring an education with other persons, they have discharged their duty to him and he has received all that he is entitled to ask of the government with respect to such privileges. The question as to how far he will avail himself of those advantages, or having done so, the use which he will make of his acquirements, must necessarily be left to the action of the individual.

The claim which is now made, that any distinction made by law and founded upon difference of race or color is prohibited by the Constitution, leads to startling results and is not believed to be well founded. While the occasion of the enactment of the constitutional amendments was such as we have referred to, its language embraces and is addressed to all classes alike, and if susceptible of the construction attempted to be placed upon it, must inhibit any enactment by the State which classifies the citizens and authorizes associations to be sustained, in whole or in part, by public bounty for the benefit of any special class. (*The Slaughter-House Cases, supra.*) When the large number of such insttiutions organized, not only in this but in other States of the Union, for the exclusive use and benefit of the colored race, and which have effected much for its improvement and advantage is considered, it is believed that no sincere friend of that people could desire to raise the questions involved in this appeal, or wish any other result than that which should sustain them in the enjoyment of those institutions specially organized for their benefit and advantage.

It would seem to follow, as the necessary result of the appellant's contention, that the action of the legislatures of the various States providing schools, asylums, hospitals and benevolent institutions for the exclusive benefit of the colored as well as other races, must be deemed to be infractions of constitutional provisions and unlawful exercise, of legislative power. The literal application of its provisions as interpreted by him would prevent any classification of citizens for any purpose whatever under the laws of the State, and subvert all such associations as are limited in their enjoyment to classes distinguished either by sex, race, nationality or creed. If the argument should be followed out to its legitimate conclusion, it would also forbid all classification of the pupils in public schools founded upon distinctions of sex, nationality or race, and which, it must be conceded, are essential to the most advantageous administration of educational facilities in such schools. Seeing the force of these contentions the appellant concedes that discrimination may be exercised by the school authorities with respect to age, sex, intellectual acquirements and territorial location, but he claims that this cannot, under the Constitution, be extended to distinctions founded upon difference in color or race. We think the concession fatal to his argument.

The language of the amendment is broad, and prohibits every discrimination between citizens as to those rights which are placed under its protection. If the right, therefore, of school authorities to discriminate, in the exercise of their discretion, as to the methods of education to be pursued with different classes of pupils be conceded, how can it be argued that they have not the power, in the best interests of education, to cause different races and nationalities, whose requirements are manifestly different, to be educated in separate places. We cannot see why the establishment of separate institutions for the education and benefit of different races should be held any more to imply the inferiority of one race than that of the other, and no ground for such an implication exists in the act of discrimination itself. If it could be shown that the accommodations afforded to one race were inferior to those enjoyed by another, some advance might be made in the argument, but until that is established, no basis is laid for a claim that the privileges of the respective races are not equal. Institutions of this kind are founded every day in the different States under the law for the exclusive benefit of particular races and classes of citizens, and are generally regarded as favors to the races designated instead of marks of inferiority.

A natural distinction exists between these races which was not created neither can it be abrogated by law, and legislation which recognizes this distinction and provides for the peculiar wants or conditions of the particular race can in no just sense be called a discrimination against such race or an abridgment of its civil rights. The implication that the Congress of 1864, and the State legislature of the same year, sitting during the very throes of our civil war, who were respectively the authors of legislation providing for the separate education of the two races, were thereby guilty of unfriendly discrimination against the colored race, will be received with surprise by most people and with conviction

by none. Recent movements on the part of the colored people of the south, through their most intelligent leaders, to secure Federal sanction to the separation of the two races, so far as the same is compatible with their joint occupation of the same geographical territory, afford strong evidence of the wishes and opinions of that people as to the methods which in their judgments will conduce most beneficially to their welfare and improvement.

This appeal has been argued by the appellant upon the assumption that the colored children have been excluded from something to which white children are admitted. This assumption is, we think, erroneous. The case shows that they have been afforded in all respects the same rights and the same advantages that have been awarded to the whites, and there is no more foundation for the claim that they have been excluded from the public schools of Brooklyn than there is for a claim that the pupils of one district, who are confined in their attendance to the district in which they reside, are excluded from its schools, or that the female pupils are excluded from equal privileges, because of their exclusion from male schools, on account of the regulations which require the separate education of the two sexes.

The right of the individual, as affected by the question in hand, is to secure equal advantages in obtaining an education at the public expense, and where that privilege is afforded him by the school authorities, he cannot justly claim that his educational privileges have been abridged, although such privileges are not accorded him at the precise place where he most desires to receive them. It was quite pertinently said by the court in *Cory* v. *Carter* (48 Ind. 363; 17 Am. Rep. 738): "In our opinion, there would be as much lawful reason for complaint by one scholar in the same school that we could not occupy the seat of another scholar therein at the same time the latter occupied it, or by scholars in the different classes in the same school that they were not all put in the same class, or by the scholars in the different schools that they were not all placed in one class, as there is that white and black children are placed in distinct classes and taught separately or in separate schools."

The fact that by this system of classification one person is required to go further to reach his place of instruction than he otherwise would is a mere incident to any classification of the pupils in the public schools of a large city, and affords no substantial ground of complaint.

It is quite impracticable for the authorities to take into account and provide for the gratification of the taste, or even the convenience of the individual citizen in respect to the place or conditions under which he shall receive an education. In the nature of things one pupil must always travel further to reach a fixed place of instruction than another, and so too the resident of one district is frequently required to go further to reach the school established in his own district than a school in an adjoining district, but these are inconveniences incident to any system, and cannot be avoided. It is only when he can show that he is deprived of some substantial right which is accorded to other citizens and denied to him that he can successfully claim that his legal rights have been invaded.

The highest authority for the interpretation of this amendment is afforded by the action of those sessions of Congress which not only immediately preceded, but were also contemporaneous with, the adoption of the amendment in question.

Exclusive schools for the education of the colored race were originally established in the District of Columbia, by Congress in 1862, since which time that body has, by repeated amendments to the original act, sanctioned and approved not only the constitutionality of such legislation, but also the policy of such a system of education. (Chap. 151, Laws of Congress 1862; chap. 83, same 1863; chap. 156, same 1864; chap. 217, same 1866; chap. 308, same 1873.) The following provision, which constitutes section 16 of chapter 156 of the Laws of 1864, is specially significant: "That any white resident of said county shall be privileged to place his or her child, or ward, at any one of the schools provided for the education of white children in said county, he or she may think proper to select, with the consent of the trustees of both districts, and any colored resident shall have the same rights with respect to colored schools." As far as we have been able to discover, this provision still remains in force, and is the law of the District of Columbia.

The thirty-ninth Congress, which originated and adopted the amendment in question, not only made appropriations and assigned funds for the support of schools in the District of Columbia, established for the education of colored pupils exclusively (Chap. 217, Laws of U. S., passed July 23, 1866), but they also appropriated moneys for the support of an institution established therein for the exclusive benefit of destitute colored women and children.

If regard be had to that established rule for the construction of statutes and constitutional enactments which require courts, in giving them effect, to regard the intent of the law-making power, it is difficult to see why the considerations suggested are not controlling upon the question under discussion.

The question here presented has also been the subject of much discussion and consideration in the courts of the various States of the Union, and it is believed has been, when directly adjudicated upon, uniformly determined in favor of the proposition that the separate education of the white and colored races is no abridgement of the rights of either.

As early as 1849 the subject, under circumstances precisely similar to those existing in this case, was considered by Supreme Court of Massachusetts in the case of *Roberts* v. *City of Boston* (5 Cush. 198), and the court, Chief Justice SHAW writing, say: "Conceding, therefore, in the fullest manner, that colored persons, the descendants of Africans, are entitled by law in this Commonwealth to equal rights, constitutional and political, civil and social, the question then arises whether the regulation in question which provides separate schools for colored children is a violation of any of their rights." And they there held that it was not, and they further say: "The law has vested the power in the committee to regulate the system of distribution and classification, and where this power is reasonably exercised, without being abused or perverted by colorable pretenses, the decision of the committee must be deemed conclusive. The committee, apparently upon great deliberation, have come to the conclusion that the good of both classes of schools will be best promoted by maintaining the separate primary schools for colored and for white children, and we can perceive no ground to doubt that this is the honest result of their experience and judgment." The Supreme Court of Ohio, in the case of *State, ex rel. Garnes*, v. *McCann* (*supra*), had before them the effect of the constitutional amendment in a case precisely similar to the one at bar, and held by the unanimous opinion of all of the members of that court, that the establishment of separate schools for the education of colored children, and their exclusion from the schools designed for whites alone did not constitute a violation of the rights of colored persons under the Constitution.

The following cases arising in different States may be referred to as supporting the same doctrine: *Cory* v. *Carter* (48 Ind. 327; 17 Am. Rep. 738); *People, ex rel. Dietz* v. *Easton* (13 Abb. Pr. [N. S.] 159); *Ward* v. *Flood* (17 Am. Rep. 405); *Dallas* v. *Fosdick* (40 How. 249); *State, ex rel. Stoutmeyer*, v. *Duffy* (8 Am. Rep. 713). These cases show quite a uniform current of authority in favor of that interpretation of the constitutional amendment which we have given to it. We have given careful examination to the various cases cited by the appellant's counsel in support of his argument, and are of the opinion that none of them conflict with the conclusions at which we have arrived. The following cases cited by him arose under statutes which either expressly forbid or did not authorize the school authorities to separate the races and assign them to different places for instruction: *Board of Education* v. *Tinnon* (26 Kans. 1); *Clark* v. *Board of Directors, etc.* (24 Iowa, 266); *Smith* v. *Directors, etc.* (40 id. 518); *Dove* v. *Ind. School Dist.* (41 id. 689); *People, ex rel. Longress*, v. *Board of Education* (101 Ill. 308; 40 Am Rep. 196); *People* v. *Board of Education* (18 Mich. 400).

The following cases also cited by the appellant are distinguishable from this as arising under the laws of the several States or districts where rendered, which absolutely prohibited the particular act complained of. They did not involve the construction of the constitutional amendments, or the rights of colored persons arising thereunder. *Central Railroad Co.* v. *Green* (86 Penn. St. 421; 27 Am. Rep. 718); *Decuir* v. *Benson* (27 La. Ann. 1); *Donnell* v. *State* (48 Miss. 680; 12 Am. Rep. 375); *Coger* v. *N. W. Union Packet Co.* (37 Iowa, 145).

In the case of *Railroad Co.* v. *Brown* (17 Wall. 446), the question arose under a statute which forbid a railroad company from excluding any person "from the cars on account of color." The court construed the act according to their understanding of the intent of Congress in passing the statute, and held that colored people could not be excluded from any car on account of their color. The case of *Strauder* v. *West Virginia* (100 U. S. 303) is strongly pressed upon our attention as an authority by the appellant. We do not consider it to be so. In that case a colored man was placed upon trial for murder, under the laws of a State which excluded colored persons, however competent, from serving as jurors in its courts. It was held that this law discriminated against the colored race, and deprived them of the right of being tried before a jury composed in part at least of persons of their own race, and which right was enjoyed by

their white fellow citizens. It was rightly held that this statute denied them the equal protection of the law, and was a violation of the constitutional amendment. We can see no analogy between these cases.

Having thus attempted to show that principle and authority both concur in the conclusions which we have reached, in regard to the questions presented on this appear, it only remains to refer to one or two other suggestions bearing less directly upon the questions presented, which have been made for our consideration.

The argument of the appellant's counsel, which is founded upon that clause of the constitutional amendment granting to every citizen the equal protection of the law, must fall with his main argument as being founded upon the unwarranted assumption that this protection has been denied to the relator in this case. Equality and not identity of privileges and rights is what is guaranteed to the citizen, and this we have seen the relator enjoy. So also the claim made that the laws of this State authorizing the establishment of colored schools were replaced by the Civil Rights Act (Chap. 186, Laws of 1873) is not well founded. It is not pretended that there has ever been any express repeal of these laws by the act in question, but it is claimed that such school laws containing discrimination, against the colored race are impliedly repealed by its enactment.

We are thus invited to hold the school laws repealed by implication, a method frequently condemned, and never favored by the courts.

It is difficult to see how there is any inconsistency even between these several laws. The act of 1873 provides that colored persons shall have "full and equal enjoyment of any accommodation, advantage, facility or privilege furnished" by the school authorities to other citizens. By another sections the use of any term in a statute which discriminates *against* persons of color is repealed and annulled. This statute provides only for equal facilities and advantages for the colored race, and these we have seen the relator under the general school laws of the State enjoys. It also condemns the use of any term in a statute which discriminates *against* colored people. We have attempted to show that the establishment of separate institutions for their education and support was not a discrimination against them.

It will be observed that the statutes nowhere require the school authorities to establish separate schools for the exclusive use of the two races, but they leave that subject to the discretion of such authorities.

Suppose actual experience had demonstrated that on account of the discomforts and annoyances to which a minority are ever subjected on account of race prejudices, the joint education of the two races was detrimental to the interests of one of them, or the wishes of the colored race in favor of separate places of education had been conclusively expressed, would it not be a just and reasonable exercise of the discretion of the school authorities to establish separate schools in such places? and could it in any sense be said, in case that was done, that either race was discriminated against by such exercise of discretion? We think not. It is undoubtedly true that in many localities in this State the school authorities have not availed themselves of their authority to cause separate places of education to be established for the respective races. And in those places the joint education of the races has been carried on. This fact seems to show that this question may safely and fairly be left to their discretion, and in time, where that course may be deemed best, it will be voluntarily adopted by such authorities. Certainly this court cannot determine, as a question of law, that there are not localities in the State in which, under the peculiar animosities affecting that locality the establishment of separate schools for the education of the colored race may not be the wisest and most beneficient exercise of discretion in their favor. The statutes of the State have left that question entirely to the school authorities, and we think have wisely done so. We cannot review the exercise by them of that discretion in any particular instance and determine that they have mistakenly or imprudently discharged the duty which the law has cast upon them.

It is not discrimination between the two races which is prohibited by law, but discrimination against the interests of the colored race. We cannot conceive it to be possible that it can be successfully maintained that in the establishment of schools, asylums, hospitals, and charitable institutions for the exclusive enpoyment of particular races or classes, that the founders thereof are justly subject to the imputation of unfriendly conduct toward the class for whom such institutions are designed.

The same legislature which enacted the so-called Civil Rights Bill also reinvested the school authorities of Brooklyn with the power conferred by the

previously existing statutes relating to the establishment of colored schools in that city, and it can hardly be implied that they intended by this act to repeal statutes which were immediately thereafter referred to by them as still existing laws.

We have thus, without considering the question as to whether the right to the writ of *mandamus* might not have been within the discretion of the court of original jurisdiction, and therefore unappealable, and the further question as to whether the respondent was the proper person to whom it should be addressed, arrived at the conclusion upon the merits, that the order should be affirmed.

DANFORTH, J. (dissenting). I cannot concur in sustaining the judgment appealed from. In my opinion the relator brings her case within the spirit, the intention and the meaning of the fourteenth amendment of the Constitution of the United States, as she also does within the letter of chapter 186 of the Laws of this State, enacted in 1873, entitled "An act to provide for the protection of citizens in their civil and public rights." It seems to be settled by repeated decisions of the Federal courts that the object of the amendment was not only to give citizenship to colored persons, but by preventing legislation against them distinctly as colored, or on the ground of color, secure exemption against any discrimination which either implies legal inferiority in civil society or lessens the security of their rights, and which, if permitted, would, in the end, subject them while citizens to the degrading condition of an enslaved race. (*Strauder* v. *West Virginia*, 100 U. S. 303; *County of San Mateo* v. *Southern Pacific R. Co.*, 13 Federal Reporter, 722; *Ex parte Virginia*, 100 U. S. 339; *Neal* v. *Delaware*, 103 id. 370; *Virginia* v. *Rives*, 100 id. 313; *United States* v. *Reese*, 92 id. 214). This amendment became part of the fundamental law in the year 1868, and the statute of this State (*supra*) was passed to carry that object into effect. The first (fourteenth amendment) declares that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, * * * nor deny to any person within its jurisdiction the equal protection of the laws." And it can make no difference in its application whether the regulation which produces that effect is embodied in a law coming directly from the legislature, or is found in an ordinance, or rule, or direction emanating from an officer whose authority to act at all in the matter is derived from the legislature. (*Ex parte Virginia*, *supra*; *Neal* v. *Delaware*, *supra*.)

The statute, however, with more detail and directness, so far as the case in hand is concerned, declares (§ 3) that discrimination against any citizen on account of color, by the use of the word "white," or any other term in any law, statute, ordinance or regulation then existing in this State, shall be annulled, and secured immunity to him in the future by providing that no citizen should, "by reason of race, color or previous condition of servitude, be excepted or excluded from the full and equal enjoyment of any accommodation, advantage, facility or privilege furnished by," among others, * * * "trustees, commissioners, superintendents, teachers and other officers of common schools and public institutions of learning." It is unnecessary to spend time in discussing the effect of the amendment as determined by any distinction between citizens of the United States and citizens of the States, or their civil rights in those two characters. For, so far as the relator is interested in the present question as a citizen of the State, and within its limits, she may rely on this law of the State. (*Supra*.) By it the doctrine under which the African race was regarded as of a rank or condition inferior to that of the white was abolished, and we are to see whether the action of the respondent was in violation of the law by which this change was brought about.

It is conceded that the appellant was forbidden to enter school No. 5 because of her color, and she was directed to go to school No. 1, because it was a "colored school." The inquiry, then, was as to the color of the proposed pupil, and the action of the respondent was determined solely by it. I am unable to see why this regulation does not stand upon "a word or term," which, by the very language of the act cited, was forbidden to be used as the means of discrimination. It is as if the respondent had said "white children only can attend this school; you are not white." Was not the relator "excepted or excluded" from the accommodation or privilege afforded by that school by reason only of her "race or color"? Clearly she was. It is argued by the respondent, however, that this does not constitute a discrimination against the relator, because the colored school would, "to the best of his judgment, information and belief, afford to the relator" every accommodation and facility for learning which she could obtain at the one from which she was excluded.

I find no support for this in the law. It is not provided that the colored pupil shall have furnished to her equal or similar accommodations as the white pupil, but that she shall not be excluded from any accommodation, advantage, facility or privilege furnished by the officers of common schools; she shall therefore, have the same, and be denied those schools for no reason save such as would exclude the children of another race. In other words, difference of color of skin, or variety of race shall, as to the accommodations or privileges spoken of in the statute, be deemed not to exist, at least, that the school officer in his official capacity shall be so ignorant of their existence as to take no notice of either, and when he does, and, therefore, excludes from any school a person who, except for such color or race, would be received therein, the discrimination is against that person; the door is shut against her, and that is proscription. In *Ex parte Virginia* (100 U. S. 339) and *Strauder* v. *West Virginia* (id. 303) it is in substance that one great purpose of the then recent amendments to the Constitution was to remove the colored race from a condition of inferiority and servitude into perfect equality of civil rights with all other persons within the jurisdiction of the States; that they were intended to take away all possibility of oppression by law because of race or color, and amounted to a declaration that the law should be the same for the black as for the white. Our own statute is more specific, but both were designed to release that race from any disability or restraint to which the other was not subjected, and make their rights and responsibilities the same. One cannot, on account of color, be excepted from jury lists (*Ex parte Virginia, supra; Strauder* v. *West Virginia, supra*), and a statute which effects that is said to put "a brand upon him, and create a discrimination against him, which is forbidden." *Strauder's Case* (*supra*), *Railroad Co.* v. *Brown* (17 Wall. [U. S.] 445) was under a law of Congress giving privileges to a railroad company, accompanied with a provision "that no person shall be excluded from the car on account of color." The company provided two cars, but set apart one for colored persons and the other for white and such was the arrangement that on the down and up trips their places were reversed. The cars, therefore, were alike comfortable, and in turn appropriated to the two races, but separately. A colored woman being excluded from one, and sent against her will to that assigned to her race, brought suit against the company, and succeeded, the court holding that the regulation separating the colored from the white passengers was illegal, and in answer to the defendant's claim that so far from excluding this class of persons from the cars they had provided accommodations for them, said "this is an ingenious attempt to evade a compliance with the obvious meaning of the requirement," which was not merely that colored people should be allowed to ride, but that in the use of the cars there should be no discrimination because of their color.

The principle of these decisions applies here. In one case, as in the other, is discrimination on account of color. The fatal defect is in the fact of discrimination and its cause. To this effect is *Central R. R. of N. J.* v. *Green* (86 Penn. St. 421; 27 Am. Rep. 718); and more in point, *Board of Education* v. *Tinnon* (26 Kans. 1) and *People, ex rel. Longress*, v. *Board of Education* (101 Ill. 308; 49 Am. Rep. 196).

The respondent has referred to a number of cases as holding a different doctrine: *People, ex rel. Dietz*, v. *Easton* (13 Abb. Pr. [N. S.] 159); *Dallas* v. *Fosdick* (40 How. Pr. 249), and some from other States. They have been examined, but found insufficient, upon the facts and statutes before us, to sustain the doctrine contended for by him. *People, ex rel. Dietz*, v. *Easton* and *Dallas* v. *Fodick* (*supra*) were both decided before the passage of the Civil Rights Act of 1873 (*supra*). The first was at Special Term and the latter at General Term by a divided court, one judge dissenting and another taking no part. The last decision being put upon a law relating to the city of Buffalo, which imperatively required separate schools for black children to be provided and their attendance limited thereto. By that law (1853, chap. 230), the public schools of Buffalo were free only to "white children" (Title 6, §5). The other (*People, ex rel, Dietz*, v. *Easton*) arose in the city of Albany. The whole city was one school district. There was no school, therefore, with which any child had any special connection, and the board of education exercised over the relator in that case the same jurisdiction which determined the location of other scholars, and upon this ground the claim of the relator to be sent to the school nearest his residence was denied. The question of color came incidentally before the court, and the effect of the fourteenth amendment was discussed, but not necessarily, nor does the decision turn upon it. *Roberts* v. *City of Boston* (5 Cush. 198) was decided in 1849, before the adoption of the fourteenth amendment, and does uphold to

the furthest extent the right of a municipality to compel the education of colored children in schools apart from white children; but those schools have been discontinued under the operation of a law passed by that Commonwealth in 1855, which provided that in determining the qualifications of scholars to be admitted into any public school or any district school, "no distinction shall be made on account of the race, color or religious opinions of the applicant or scholar."

If the respondent is right, then with equal plausibility it might be said that the city of Brooklyn could provide parks, streets and sidewalks exclusively for persons of color, or, if elected, as they may be, to sit in its council chamber, prescribe absolutely what seats they shall occupy, or its courts assign to the jurymen of that race, boxes separate from others, denying them access to other streets, parks, sidewalks and seats. It would not answer in either case to say all these things are equal or even better in degree than those. This would still be discrimination against the race, and so with the school, the main business of which is to prepare a youth for his future duties as a citizen in his various relations toward the State, the performance of obligations due to other citizens, and possibly even forbearance and conduct toward opposing races.

The State gathers to its treasury the money of the tax payer without inquiry as to his color;—with like indifference accepts his vote, and subjects him to its laws, and in return, among other privileges provides an opportunity for education. This being conceded, the manner of adjusting it is evidently the one prescribed by the State itself—schools free to all children, therefore to children of both races, upon conditions applicable to each alike. No other can be relied upon. The application of the rule contended for by the respondent would vary according to the conceit or bias of the school board, and the estimate they might put upon the relative positions of the two races; the needs of the colored pupil and required capacity of her teacher. There is also the general law of the State declaring all common schools (and that in question is one of them) free to all persons over five and under twenty-one years of age, residing in the district (Act of 1851, chap. 151, § 1; act of 1864, chap. 555, title 7, art. 5, § 39), and these schools were necessarily open to colored as well as white children. It is contended, however, by the respondent that the statute last cited (Title 10, §§ 1, 2), and the statute of 1850 (Chap. 143, § 4) gave to the board of education power to establish separate schools for colored children. Conceding that to be so, it does not follow that they should or can be excluded from others. Different language would naturally be employed to express such a purpose.

The first act, that of 1864 (*supra*, art. 5, § 39), provides that "Common schools in the several school districts of this State shall be free to all persons over five and under twenty-one years of age, residing in the district," but section 40 declares that if a school district include a portion of an Indian reservation whereon a school for Indian children has been established by the superintendent of public instruction, and is taught, the school of the district is not free to Indian children resident in the district, or on the reservation, nor shall they be admitted to such school except by the permission of the superintendent." It is apparent, first, that the education of all children within the ages named is intended to be provided for; second, that separate schools may be established for Indians and separate schools for colored children; and third, I think it clear from the different phraseology used by the legislature in reference to these races that a colored child might attend either a colored school or white school at his election. In regard to him there are no words of prohibition as in the case of the Indian, and, except for those words of prohibition, it was the evident understanding of the legislature, an Indian could attend either. The white school remained free to the colored pupil, but was closed against the Indian, except by permission of the superintendent of public instruction.

And so with the legislation under review by the Supreme Court in *Dallas* v. *Fosdick* (*supra*). The language in terms excludes colored children. Such language is not to be found within the limits of the statutes relating to Brooklyn. But we have now the act of 1873 (Chap. 186, already cited), which permits no doubt as to the present absolute right of each child not disqualified by some mental or moral defect, to attend the common school established in the district where he resides. Previous limitation on account of color, if any existed, necessarily ceased with the enactment of this act (1873, *supra*). Nor did the subsequent statute of June 1873 (Chap. 863), amending the charter of Brooklyn, or the act (Chap. 420) of the same year, relating to the board of education, have the effect to repeal as to that city the Civil Rights Act already cited (Chap. 186, Laws of 1873). An express repeal is not pretended, and there is nothing in the act from which a repeal can be implied. The two acts have

different objects; the first (that of April 1873, *supra*) is defined by its title and was aimed a the protection of the citizen, while the other (that of June, chaps. 420, 803) as part of the general charter of the city, created a department of public instruction, to be under the control of a board of education, to which it declares "all the provisions of law relating to the present board of education shall apply," and if I am right in the foregoing discussion, then among others, the provisions of the act just before passed (Chap. 186).

It is not long since the inferiority of the colored man was received by a great majority of the white race as a general edict of nature, and upon it as a fundamental principle laws were passed, and regulations, usage and custom founded. In deference to it, and the general sentiment of antipathy to the negro race, "colored schools" were authorized by the statutes referred to, and then certain schools before free to all were open only to the white citizen. By the act of 1873 (Chap. 186) the "word or term" which was thought to permit this discrimination was annulled, and thenceforward it became impossible. Neither the wisdom nor justice of this course of legislation is now in question, nor are we to inquire whether co-education of the races is desirable, or more or less likely than the separate system to promote the welfare of either, but it cannot; I think, be doubted that the latter, when enforced by law against the wish of the colored race, is directly calculated to keep alive the prejudice against color from which sprung many of the evils for the suppression of which the fourteenth amendment and our own civil rights statutes were enacted.

We find, however, in the opinion of the learned judge who disposed of this case at Special Term, a suggestion that the discrimination was in favor of the colored child. That question may well be left to the child itself. The statute should not be construed as prohibiting such intercourse or association. For any regulation by which the black is kept in a state of separation is in fact one of exclusion and reflects the sentiment by which the white assumed to be the superior race, a discrimination against which the law is now directly aimed. In regard to schools the question can arise but seldom. In most of the counties and cities of this State no provision is made for the separate education of colored children. In a few counties, and in the city of New York as well as Brooklyn, such accommodations are provided. But when they are not confined to those schools and excluded from others, the attendance at them has steadily decreased, as we learn from the reports of the board of education of the city of New York, made under the direction of the legislature (Laws of 1851, chap. 386, § 3, subd. 10), and that this diminished attendance is due to the fact that all its public schools are now open to pupils without distinction of race or color, and "that many parents and guardians of colored children have, therefore, availed themselves of the privilege in the matter of selection of schools." (See reports of 1881 and 1882.)

From the report of 1880, made by the board of education of the city of Buffalo, we find the same condition exists in that city. Colored children now attend the other schools with such unanimity that the superintendent recommends, that by legislative interference, the compulsory part of the law be repealed and the city no longer be required to provide separate schools for children who cannot be compelled to resort to them.

In the case before us the city is under no obligation to maintain a separate school for children of color. But the objection is not to its existence; the objection is that the relator is compelled to attend it because of her color, and so is excluded from schools to which children of another race are permitted to resort. The exaction is, therefore, unequal, and is, I think, in violation of the law which gives to all children, within the several districts, an equal right, in like cases and under like circumstances, to go to those schools for education. I am, therefore, led to the conclusion that the relator, on account of her color, has been prevented, by a public officer and by ordinance or regulation, from enjoying an accommodation or privilege to which, as a citizen of this State, she is entitled. In such a case the court has no discretion to exercise, for the writ of *mandamus* affords the only adequate remedy, and it should have been granted. (*People, ex rel. Gaslight Co.*, v. *Common Council of Syracuse*, 78 N. Y. 56.)

The orders of the Special and General Terms should, therefore, be reversed, and a writ issued, pursuant to the prayer of the petitioner.

RAPALLO, MILLER and EARL, JJ., concur with RUGER, Ch. J.; FINCH, J., concurs with DANFORTH, J.; ANDREWS, J., absent.

Orders affirmed.

Mr. BLOCH. I do want to allude to parts of it that are so pertinent to our position, Senator:

> Under the provisions of the Common School Act of 1864—

and that is a New York State law—

> authorizing the establishment of separate schools for the education of the colored race in cities and incorporated villages, the school authorities therein have power when in their opinion the interests of education will be promoted thereby, to establish schools for the exclusive use of colored children, and when such schools are established and provided with equal facilities for education, they may exclude colored children from the schools provided for the whites.
>
> The establishment of such separate schools for the exclusive use of the different races is not an abridgement of the privileges or immunities preserved by the 14th amendment of the Federal Constitution, nor is such a separation a denial of the equal protection of the laws given to every citizen by said amendment.
>
> All that is required by said act or by the constitutional amendment, if applicable, is the privilege of obtaining an education under the same advantages and with equal facilities as those enjoyed by any other individual, equality and not identity of rights and privileges is what is guaranteed to the citizen.

That is what the Court of Appeals of New York said in 1883, 15 years after the adoption of the 14th amendment, and there are parts of that opinion that are so apt in the views of the South today. After citing from *Roberts v. City of Boston* at page 448, the court said:

> As to whether such intercourse shall ever occur must eventually depend upon the operation of natural laws and the merits of individuals and can exist and be enjoyed only by the voluntary consent of the persons between whom such relations may arise. But this end can neither be accomplished nor promoted by laws which conflict with the general sentiment of the community upon whom they are designed to operate.
>
> When the Government therefore has secured to each of its citizens equal rights before the law and equal opportunities for improvement and progress, it has accomplished the end for which it is organized, and performed all of the functions respecting social advantages with which it is endowed.
>
> The claim which is now made that any distinction made by law and founded upon differences of race and color is prohibited by the Constitution leads to startling results and is not believed to be well founded.

I won't take time to read more of that except to say this, Senator: That doctrine was pronounced.

Senator ERVIN. You would like to have that included in the record? It has been so ordered.

Mr. BLOCH. Shortly I am going to come to another New York case and to Missouri case which I am particularly anxious to discuss with the committee, and it may be said why are you talking about those cases?

Those cases were all wiped out by the decisions of May 17, 1954.

As I read along in this, we go along in this discussion, I hope that the committee will consider what I am saying in the light of this. That what I am trying to demonstrate to the commmittee and through the committee to the Senate and the Congress of the United States, that instead of perpetuating the error which I respectfully submit the Supreme Court committed in its decisions of May 17, 1954, instead of perpetuating that error, instead of building on it, what the Congress of the United States ought to be doing is to join with us of the South in trying to get this great problem settled and settled on a constitutional basis and have readopted by the Court the great principles which were announced by the courts of Massachusetts, by the courts of New York, and by the courts of Ohio, by the courts of Indiana, by the courts of North Carolina, by the courts of Missouri, to have those great consti-

tutional principles readopted in lieu of psychological principles of Myrdal and other similar Swedish investigators.

That is the purpose.

Senator ERVIN. May I interrupt at this point? I have been astounded by a spirit which seems to be abroad in certain sections that you and I and other Americans do not have the right to question the soundness of a Supreme Court decision. I would just like to ask the people who now preach that had practiced the same doctrine, the case of *Gong Lum* v. *Rice*, which was handed down by a unanimous court headed by William Howard Taft in 1927 and which holds exactly the opposite of the decisions of May 1954, would still be the law of the land, would it not?

Mr. BLOCH. Yes, sir; of course it would.

Senator ERVIN. And also I would like to make this observation: I thank the good Lord that Americans have the right to think and express their honest thoughts concerning everything under the sun, including the decisions of Supreme Court majorities. It has been said that we ought to be silent because if we speak our honest thoughts they might detract from the dignity and prestige of the Supreme Court of the United States.

But I have this conviction: That no public official is entitled to any respect other than that which he merits, and that this observation is true of all public officials whether they be presidents, senators, congressman, governors, judges, or dog catchers. Whenever the day comes that people cannot express their honest thoughts about decisions of courts as well as other matters, the death knell of liberty in America is sounded. I have a good precedent for this view also in the same Abraham Lincoln. I think it would be well if the American people would read his great debates with Judge Stephen A. Douglas in the Senate race of 1858.

Abraham Lincoln made some very strong remarks concerning the Supreme Court decision in the Dred Scott case. This is what he said in substance: The decision of the Supreme Court is erroneous. It is contrary to such precedents as we have upon the subject. It is founded in part upon factual assumptions which are not really true.

He said, in substance, that he refused to accept it as a rule of political conduct for the people or the agencies of government, and that he would do everything within his power to secure its reversal.

Then he said another thing that is very significant. He said in substance, that if he were a member of Congress and a measure should come before that body providing for the exclusion of slavery from the territories, he would vote for that measure notwithstanding the fact that the Supreme Court of the United States had said in the Dred Scott decision that Congress did not have the constitutional power to exclude slavery from the territories.

I would suggest to the folks who would curtail our right to freedom of speech, that before they attempt to do so, they go and read what Abraham Lincoln said in the debates with Judge Douglas.

We are delighted to have present the Junior Senator from Georgia.

Senator TALMADGE. Thank you.

May I make a very brief statement, Mr. Chairman?

Senator ERVIN. Yes, we will be glad to hear you.

STATEMENT OF HON. HERMAN TALMADGE, UNITED STATES SENATOR FROM THE STATE OF GEORGIA

Senator TALMADGE. I had hoped to accompany my distinguished constituent, Mr. Charles J. Bloch, to this committee this morning to present him to the committee, but due to a meeting of the Agriculure Committee of which I am a member I did not have that privilege.

I would like the Chair and the members of the committee to know that Mr. Bloch is one of the most outstanding constitutional lawyers in America. He has been president of the Bar Association of the State of Georgia. He has held very important positions in the American Bar Association. He has been chairman of the judicial council of Georgia since its creation some 12 years ago.

He is a member of the State Board of Regents of my State. He is chairman of the educational committee of the State board of regents.

I wanted the committee to know something of Mr. Bloch's background so his testimony could be given its true perspective which it richly deserves.

Also, the distinguished attorney general of my State, the Honorable Eugene Cook, was supposed to appear before this committee this morning, but his office informed me yesterday that he was ill and could not be present. He asked me to have his statement inserted in the record, which I believe Mr. Bloch has already requested and perhaps you have done.

Senator ERVIN. That has been done.

Senator TALMADGE. Thank you very much, Mr. Chairman.

Senator ERVIN. Senator, we are delighted to have you make this statement to the subcommittee. I stated at the opening that I had had the privilege of knowing Mr. Bloch for approximately 10 years, and had also known him by reputation for many years, and that I considered him one of the country's ablest lawyers and finest citizens.

Senator TALMADGE. Thank you.

Georgia has no more distinguished citizen.

STATEMENT OF CHARLES J. BLOCH—Resumed

Mr. BLOCH. Following up the Chair's suggestion just prior to Senator Talmadge's statement, it is right interesting to show the application of that to *Plessy* v. *Ferguson*, decided in 1896. It held that the separation of the races on a train of cars did not violate the 14th amendment. That was the law of the land.

Now we are told that because we do not supinely bow to the Supreme Court decision of May 17, 1954, and thus destroy our public school systems in Georgia, we are told that we are, almost it is said, that we are traitors.

But as I stated recently, from 1896 to 1956, 60 years, *Plessy* v. *Ferguson* was the law of the land as applied to transportation facilities, and the first person who in violation of an ordinance of the city of Montgomery stepped on a bus violated the law of the land.

Yet he is a hero. But we who are trying to keep our public school systems intact are not heroes, to say the least of it.

That *Plessy* v. *Ferguson* doctrine was announced by a court composed of Justices Brown, Field, Gray, Shiras, White, Peckham, and

Fuller, not one of them except Justice White from the South, the Chief Justice being from Illinois.

In 1899, *Cumming* v. *Richmond County Board of Education* (175 U. S. 529), was decided by the Supreme Court of the United States. That opinion, sir, is particularly interesting, because it was written by Justice Harlan.

I think there is a misprint there in my statement. It has "Hobson." It is Harlan, the grandfather of the present Justice Harlan. It held that the right and power of the State to regulate the method of providing for he education of its youth at public expense is clear. The gist of the complaint in the trial court was that the board of education had used funds to assist in maintaining a high school for white children without providing a similar school for colored children.

The substantial relief prayed was an injunction. The trial court in Richmond County, Ga., had granted the injunction.

The chancellor of the State court judge elected by the people—no, he was not elected by the people then; he was chosen by the legislature at that time—granted that injunction. The Supreme Court of Georgia reversed it.

After the judgment of the Supreme Court of Georgia was made the judgment of the lower court, it was appealed to the Supreme Court of the United States, which was then composed of Chief Justice Fuller, and Justices Harlan, Gray, Brewer, Brown, Shiras, White, Peckham, and McKenna, only one southerner.

Speaking through Justice Harlan, the court said at page 544:

> The substantial relief asked is an injunction that would either impair the efficiency of the high school provided for white children, or compel the board to close it. But if that were done, the result would only be to take from white children educational privileges enjoyed by them, without giving to colored children additional opportunities for the education furnished in high schools. The colored schoolchildren of the country would not be advanced in the matter of their education by a decree compelling the defendant board to cease giving support to a high school for white children.

And, at page 545, the Court said:

> The State court did not deem the action of the Board of Education in suspending temporarily and for economic reasons the high school for colored children, a sufficient reason why the defendant should be restrained by injunction from maintaining an existing high school for white children.

An then the Court said—and this is so pertinent, so cogent:

> We may add that while all admit that the benefit and burdens of public taxation must be shared by citizens without discrimination against any class on account of their race, the education of the people in schools maintained by State taxation is a matter belonging to respective States, and any interference on the part of the Federal authority with the management of such schools cannot be justified except in a clear and unmistakable disregard of rights secured by the law of the land.

This decision is the more to be considered because it was written by Justice Harlan, who had dissented 3 years before in *Plessy* v. *Ferguson*.

I interpolate, Mr. Chairman. Just look at the importance of that in the present day. We have in Georgia, as I have said once or twice here this morning, we have a constitutional provision that the education of our young, the education of our youth, is one of the fundamental duties of the State, and that it must be carried on by taxation. But that separate schools must be maintained for the white and the colored children.

So that under the Georgia constitution, which can only be changed by a vote of the people of Georgia, the kind of public schools, the nature of the public school system which we must have, if we have any, is a segregated system.

Now suppose perchance a colored person should become dissatisfied with the education that he is receiving, say in Fulton County, Ga., and should bring an injunction in the proper court having jurisdiction over Fulton County, or if this legislation before your committee is adopted so that the Attorney General of the United States should bring such an injunction, and it should be held by a proper tribunal, to wit, the district court, the United States District Court for the Northern District of Georgia, that the members of that school board in Fulton County could no longer maintain separate schools for the white and colored children, as our laws provide that they must if they maintain any, what happens?

That does not mean, as your distinguished judge, Judge Parker, so aptly pointed out in a decision in a South Carolina case in the fourth circuit, that does not mean that the school system there in Atlanta must be integrated.

No court can say that. No court can ever say it to the school authorities, or rather under repeated precedents no court can ever say it, that the public school authorities must maintain an integrated school system in Fulton County, Ga. All that they can say is that you can't maintain a segregated system. Well, what happens? We have none until the people of the State of Georgia see fit to change their constitutional provision, which I think will be a long, long time off.

So you can see the aptness of Justice Harlan's opinion written for the unanimous court back there in 1899.

Where would it help the colored children to close up all the schools in any county in Georgia? Where would it help them to just cut off all education? And that is why we are trying so hard to maintain our public school system.

Plessy v. *Ferguson* was repeatedly followed in later cases——

Senator ERVIN. Some people entertain what I deem to be peculiar notions on the subject as to whether the Federal Government should aid the States in the construction of public schools. As everybody knows, school policies are established by adults—not by schoolchildren. Whenever a bill is proposed to grant Federal aid to States for school construction purposes, some Congressmen say: "The children need education. The school systems are inadequate. But we won't let Southern States have aid unless they integrate their schools." Since the little children of the Southern States cannot prescribe how the schools are to be conducted, it seems to me that those Congressmen are certainly visiting the supposed sins of the fathers upon the children with a vengeance.

In other words, the children are being denied adequate education because some people don't like what their fathers do about things.

Mr. BLOCH. And I have often wondered, Senator, as a corollary to that—it may be somewhat departing from the text here, but I have often wondered—and I know you have, and I know you are going to

discuss it some day, I hope you will, under what power of Congress does the Congress of the United States appropriate money for the erection and maintenance of public schools in the States?

Well, we are supposed to be a Government of delegated powers. The Congress has only such powers as the States have delegated to it. Under what power of Congress are those bills being considered? But to go back to *Plessy* v. *Ferguson*, it was repeatedly followed in later cases, namely, *Chesapeake and Ohio Railway Company* v. *Kentucky* (179 U. S. 388 (1900)); *Chiles* v. *Chesapeake and Ohio Railway Company* (218 U. S. 71 (1910)); *McCabe* v. *A. T. & S. F. Railway Company* (235 U. S. 151 (1914)), and in them the doctrine was confirmed by Justices McKenna, Holmes, Day, Moody, Lurton, Hughes, Joseph R. Lamar, and McReynolds

And, in 1927, *Gong Lum* v. *Rice* (275 U. S. 78), was decided by Chief Justice William Howard Taft with these Justices concurring: Oliver Wendell Holmes, of Massachusetts; Van Devanter, of Wyoming; Brandeis, of Massachusetts; Butler, of Minnesota; Sanford, of Tennessee; Stone, of New York; McReynolds, of Tennessee; and Sutherland, of Utah.

The Chief Justice cited approvingly *Cumming* v. *Richmond County Board of Education*, supra, and also, among others, these cases:

People v. *Cisco* (161 New York 598), in which the court of last resort of New York reiterated the principle of the *Gallagher* case.

I have here, sir, a complete copy of the opinion in the *Cisco* case which I ask be made a part of the record. That case was decided by a court of which Judge Alton B. Parker was chief judge, afterwards a distinguished candidate for the Presidency of the United States, either in 1904 or 1908.

Senator ERVIN. 1904.

Mr. BLOCH. This was in 1900. Here is what the New York court said:

> Thus, the same statutory authority for the maintenance of such separate schools now exists as existed when *King* v. *Gallagher* was decided.

Note this sentence:

> Therefore, as this question has already been decided, it is not an open one in this court.

The New York court held to the principle, the great principle, of stare decisis. And it has this pungent, cogent sentence in it:

> It was the facilities for and the advantages of an education that the State was required to furnish to all the children, and not that it should provide for them any particular class of associates while such education was being obtained.

That is not a North Carolina judge, sir. That is not a Georgia judge talking. That is a group of New York judges talking in 1900 about the very same Constitution that the Supreme Court of the United States considered in 1954.

New York agreed with our theory, that a Constitution is not a chameleon, a lizard remarkable for the changes of color of the skin according to the mood of the animal or surrounding conditions.

Senator ERVIN. That will be included in the record.

(The document is as follows:)

THE PEOPLE OF THE STATE OF NEW YORK EX REL. ELIZABETH CISCO, APPELLANT, v. THE SCHOOL BOARD OF THE BOROUGH OF QUEENS, NEW YORK CITY, RESPONDENT

(Vol. 161, N. Y. Rep.; February 1900)

OPINION OF THE COURT, PER MARTIN, J.

1. SCHOOLS—SEPARATE SCHOOLS FOR COLORED CHILDREN. The Consolidated School Law (L. 1894, ch. 556, tit. 15, § 28) authorizes the school board of the borough of Queens to maintain separate schools for the education of its colored children, and to exclude them from its other schools, provided, always, that the schools for colored children make the same provisions for their education as are made for others, so far as the nature, extent and character of the education and facilities for obtaining it are concerned.

2. CONSTITUTIONAL LAW—PENAL CODE, § 383. Neither the provisions of article 9 of the Constitution of 1894, relating to a system of free common schools, nor those of section 383 of the Penal Code, making it a misdemeanor for teachers or officers of the common schools and public institutions of learning to exclude any citizen from the equal enjoyment of any accommodation or privilege, qualify or limit the right to establish separate schools of such a character, the school board having the right to determine where different classes of pupils shall be educated, provided equal facilities and accommodations are afforded all.

People ex rel. Cisco v. *School Board*, 44 App. Div. 469, affirmed.

(Argued January 9, 1900; decided February 6, 1900.)

APPEAL from an order of the Appellate Division of the Supreme Court in the second judicial department, entered November 28, 1899, affirming an order of the Special Term denying an application for a peremptory writ of mandamus to compel the defendant to admit the children of the relator to one of the common schools of the borough of Queens, without distinction of color.

The facts, so far as material, are stated in the opinion.

George Wallace for appellant. The respondent has no right to exclude relator's children from the common schools on account of their color. (L. 1897, ch. 378, §§ 1050, 1094; L. 1884, ch. 248; *People* v. *King*, 110 N. Y. 418; Penal Code, § 383; L. 1894, ch. 671; Const. N. Y. art. 9, § 1.)

John Whalen, Corporation Counsel (*William P. Carr* of counsel), for respondent. The school board had the power to organize a separate school for the instruction of children of African descent and to assign thereto the children o the relator. (L. 1897, ch. 378, § 1094; L. 1864, ch. 555, tit. 10, § 1; *People ex rel.* v. *Gallagher*, 93 N. Y. 438; *Ward* v. *Flood*, 48 Cal. 36; *Cory* v. *Carter*, 48 Ind. 327; *Roberts* v. *Boston*, 59 Mass. 198; *Lehen* v. *Brummell*, 103 Mo. 546; *McMillan* v. *School Committee*, 107 N. C. 609; *L. R. R. Co.* v. *Mississippi*, 133 U. S. 587; *Plessy* v. *Ferguson*, 163 U. S. 537; *State* v. *McCann*, 21 Ohio St. 211.)

MARTIN, *J.* The single question in this case is whether the school board o the borough of Queens is authorized to maintain separate schools for the education of the colored children within the borough, and to exclude them from the other schools therein, it having made the same provisions for their education as are made for others so far as the nature, extent, and character of the education and facilities for obtaining it are concerned.

In *People ex rel. King* v. *Gallagher* (93 N. Y. 438) the statute of 1864, whicl was the Common School Act, chapter 143, Laws of 1850, and chapter 863, Law of 1873, which related to the public schools of the city of Brooklyn, were under consideration. They authorized the establishment of separate schools for the education of the colored race in cities and villages of the state, and in the cit, of Brooklyn. In that case it was held that they were valid, that they did no deprive children of African descent from the full and equal enjoyment of an; accommodation, advantage, facility, or privilege accorded to them by law, and that they in no way discriminated against colored children. It was also held that the fourteenth amendment of the Federal Constitution only required tha such children should have the same privilege of obtaining an education with equa facilities as are enjoyed by others without regard to race or color, and that the requirement that they should be educated in separate schools did not impair or interfere with their rights under the Constitution or with any other legal right. of colored pupils.

The Consolidated School Law (Laws of 1894, ch. 556, tit. 15, § 28) contains the same provisions relating to this subject as were contained in the statute of 186 Thus the same statutory authority for the maintenance of such separate schools

now exists as existed when the *King* case was decided. Therefore, as this question has already been decided, it is not an open one in this court.

But it is insisted by the appellant that as the Penal Code (Sec. 383) makes it a misdemeanor for teachers or officers of common schools and public institutions of learning to exclude any citizen from the equal enjoyment of any accommodation or privilege, it in effect confers upon colored children the right to attend any school they or their parents may choose, and that the school board had no authority to establish separate schools and deny them the right to attend elsewhere. The first answer to this insistence is that the Penal Code was in existence at the time of the decision of the *King* case, and must be regarded as having been considered in that case. Moreover, independently of that decision, we do not see how that statute changes the effect of the conclusion reached in the case referred to, provided the facilities and accommodations which were furnished in the separate schools were equal to those furnished in the other schools of the borough. It is equal school facilities and accommodations that are required to be furnished, and not equal social opportunities.

The case of *People* v. *King* (110 N. Y. 418) is relied upon as modifying or overruling *People ex rel. King* v. *Gallagher*. We do not think such is its effect. In the former case a colored person was excluded from a place of public amusement controlled by the defendant, and it was there held that the latter was guilty of a misdemeanor. In that case there was a total denial of the complainant's right to attend or to participate in the enjoyment of the entertainment. There no other accommodation or facility was furnished by the defendant. Not so here. In this case the colored children were given the same facilities and accommodations as others. We are of the opinion that the case of *People* v. *King* neither modifies nor affects the principle of the decision in *People ex rel. King* v. *Gallagher*, so far as it applies to the question under consideration.

Again it is said that the present Constitution requires the legislature to provide for the maintenance and support of a system of free common schools wherein all the children of this state may be educated, and, therefore, the school board was required to admit to any school under its control all the children who desired to attend that particular school. Such a construction of the Constitution would not only render the school system utterly impracticable, but no such purpose was ever intended. There is nothing in that provision of the Constitution which justifies any such claim. The most that the Constitution requires the legislature to do is to furnish a system of common schools where each and every child may be educated, not that all must be educated in any one school, but that it shall provide or furnish a school or schools where each and all may have the advantages guaranteed by that instrument. If the legislature determined that it was wise for one class of pupils to be educated by themselves, there is nothing in the Constitution to deprive it of the right to so provide. It was the facilities for and the advantages of an education that it was required to furnish to all the children, and not that it should provide for them any particular class of associates while such education was being obtained. In this case, there is no claim that the relator's children were excluded from the common schools of the borough, but the claim is that they were excluded from one or more particular schools which they desired to attend and that they possessed the legal right to attend those schools, although they were given equal accommodations and advantages in another and separate school. We find nothing in the Constitution which deprived the school board of the proper management of the schools in its charge, or from determining where different classes of pupils should be educated, always providing, however, that the accommodations and facilities were equal for all. Nor is there anything in this provision of the Constitution which prevented the legislature from exercising its discretion as to the best method of educating the different classes of children in the state, whether it relates to separate classes as determined by nationality, color or ability, so long as it provides for all alike in the character and extent of the education which is furnished and the facilities for its acquirement.

The order should be affirmed, with costs.

PARKER, Ch. J., GRAY, O'BRIEN, BARTLETT and HAIGHT, JJ., concur; VANN, J., not voting.

Order affirmed.

Senator ERVIN. I was astounded some time ago to read an article by a man who was a former secretary of one of the Justices of the Supreme Court of the United States in which he took us very much to task for suggesting that the Constitution of the United States should

be interpreted to have the meaning which was given to it by the people who drafted and ratified it. The implication of his article was that George Washington, who happened to be the President of the Constitutional Convention of 1787, and Alexander Hamilton, Benjamin Franklin, James Madison, and their associates, whom I have always considered to be hardheaded and intelligent men, sat down and wrote out a document which they did not intend should have any meaning, except such as some judges might ascribe to it at some remote time in the future.

I think that view is an insult to the intelligence of the men who drafted the Constitution, and to the people who ratified it. I would say myself, as you mentioned, that the Constitution was really a compact between the States and the people on the one hand, and the Federal Government on the other. If a man should sign a contract whose language could be interpreted to mean one thing today and another thing tomorrow, he would be a proper subject for an inquisition in lunacy. Yet, we hear it solemnly asserted that George Washington and his hardheaded and highly intelligent associates drew up that kind of a contract when they drafted the Constitution of the United States.

Mr. BLOCH. That theory of a constitution was that it was sort of like a chameleon, which you and I know is a lizard, remarkable for the changes of the color of the skin according to the mood of the animal or surrounding conditions. Well, if we are living in a day when a constitution is a chameleon, we might just as well give up.

Now the next State court case, sir, which I would like to put into the record, is the opinion of the Supreme Court of Missouri in the case of *Lehew et al.* v. *Brummell et al.* (103 Missouri 546), in which the Supreme Court of Missouri held in 1890—held that the constitution and laws of this State providing separate schools for colored children are not forbidden or in conflict with the 14th amendment to the Federal Constitution, and used this sentence:

> Equality and not identity of privileges is guaranteed to the citizens by said amendment.

At least 1 of the gentlemen, 1 of the Senators who is on the committee, certainly would have more knowledge of the gentlemen who composed the court at this time than I have, but I was particularly interested with this statement at page 551 in the opinion:

> But it will be said that the classification now in question is one based on color, and so it is. But the color carries with it natural race peculiarities which furnish the reason for the classification.
>
> There are differences in races and between individuals of the same race, not created by human laws, some of which can never be eradicated.
>
> These differences create social relations recognized by all well-organized governments. If we cast aside theories and look to practical results, it seems to us it must be conceded that separate schools for colored children is a regulation to their great advantage.

Mr. Chairman, that is what Missouri has repeatedly thought about it.

Missouri adopted a new constitution in 1945, 45 years after this decision, and in the constitution of 1945 as Georgia did in its constitution of 1945, reiterated that provision.

And it was the great State of Missouri which, in the case of *Gaines* v. *Canada*, started the law-school litigation, or laid the basis for it, to which I will allude later.

Senator ERVIN. That will be incorporated in the record at this point. (The document is as follows:)

SUPREME COURT OF MISSOURI, VOL. 103, OCTOBER TERM, 1890

LEHEW ET AL. V. BRUMMELL ET AL., APPELLANTS

DIVISION ONE

1. Federal Constitution: COLORED CHILDREN: SEPARATE SCHOOLS: FOURTEENTH AMENDMENT. The constitution and laws of this state providing for *separate* schools for colored children are not forbidden by or in conflict with the fourteenth amendment to the federal constitution.

2. ———: ———: ———: ———. Equality and not identity of privileges is guaranteed to the citizen by said amendment.

3. ———: ———: ———: ———. Nor does the fact that colored children have to go further to attend school than white children furnish a substantial ground of complaint on the part of the former.

4. Practice: INFANT'S GUARDIAN AD LITEM. A suit cannot be further prosecuted against an infant defendant after service of process, until a guardian *ad litem* has been appointed.

Appeal from Grundy Circuit Court.—HON. G. D. BURGESS, Judge.

AFFIRMED.

E. M. Harber for appellants.

Any attempt on the part of the state to deprive certain of the children of a certain school district from attending the only school in said district, of which they are listed and properly enumerated, for the sole and only reason that they are colored, or of African descent, is in violation of section 1 of the fourteenth amendment to the constitution of the United States. *Strauder v. West Virginia*, 100 U. S. 303; *Virginia v. Rives*, 100 U. S. 313; *United States v. Stanley*, 109 U. S. 8; *Elk v. Wilkins*, 112 U. S. 94; *Matter of Hall*, 50 Conn. 131; *Board of Ed. v. Tinnon*, 13 Cent. L. J. (Kan.) 272; *People ex rel. v. Gallagher*, 93 N. Y. 438. Judgment was improperly rendered against Ananias, Cordelia, Lord Thomas and Odes Brummell, they being infants. R. S. 1889, sec. 2005; *Clark v. Crosswhite*, 28 Mo. App. 34; *Railroad v. Campbell*, 62 Mo. 585; *Campbell v. Gaslight Co.*, 84 Mo. 352; *Goode v. Crow*, 51 Mo. 213; *Robinson v. Hood*, 67 Mo. 660.

R. A. DeBolt for respondents.

(1) A statute establishing separate free public schools for white and colored children is in harmony with the constitution of this state (art. 11, sec. 3), and is not in violation of the fourteenth amendment of the constitution of the United States, and, where appropriate schools for colored children are maintained, such children may be lawfully excluded from schools established for white children. *State ex rel. v. McCann*, 21 Ohio St. 198; *Van Camp v. Board*, 9 Ohio St. 407; *State ex rel. v Cincinnati*, 19 Ohio, 178: *Ward v. Wood*, 48 California, 36; 17 Am. Rep. 405; *Roberts v. Boston*, 5 Cushing, 198; *People v. Gallagher*, 93 N. Y. 438, and citations; 45 Am. Rep. 232; *Cory v. Carter*, 17 Am. Rep. 738; 48 Ind. 327; *State ex rel. v. Duffy*, 8 Am. Rep. 713; 7 Nevada, 342. (2) The fact that, by the organization of separate schools, a person is required to go further to reach his place of instruction than he otherwise would, is a mere incident to any classification of the pupils in the public schools, and affords no substantial ground of complaint. *People ex. rel. v. Gallagher*, 93 N. Y. 451; *Ward v. Flood*, 48 Cal. 52, 53.

BLACK, J.—The five plaintiffs in this case reside in school district number 4, in Grundy county, and each has children entitled to attend the public school maintained therein for the education of white children. In September, 1887, when this suit was commenced, the defendant Barr was the teacher, and three of the defendants were directors of the school district. The defendant Brummell is a man of African descent, and at the last-mentioned date had four children, all of whom resided with him in said district and were of the ages entitling them to attend the public schools. These four children were the only colored children of school age in the district. No separate school was ever established or maintained therein for the education of colored children; but there was such a separate school in the town of Trenton in the same county, three and one-half miles from Brummell's residence. No white child in district number 4 had to go more than two miles to reach the schoolhouse. These colored children were permitted to attend the school maintained for white children in district number 4 for a short time.

On the foregoing facts a temporary injunction was awarded the plaintiffs, restraining Brummell's children from attending the school so established for white children, which was made perpetual on the final hearings of the cause, and the defendants appealed.

But two questions are presented by the briefs for our consideration. The first is, that the laws of this state concerning the education of colored children are in conflict with section 1 of the fourteenth amendment of the constitution of the United States, and, therefore, void.

Section 1, of article 11, of the constitution of this state, makes it the duty of the general assembly to establish and maintain free public schools for the gratuitous instruction of all persons in this state between the ages of six and twenty years; and section 3 of the same article declares: "Separate free public schools shall be established for the education of children of African descent."

A system of free public schools has been established by general laws throughout the state, and for all the purposes of this case it will be sufficient to notice the statutes concerning colored schools. The first section of the amendatory act of 1887 (Acts, 1887, p. 264) provides: "When there are within any school district in this state fifteen or more colored children of school age, the school board of such school district shall be and they are hereby authorized and required to establish and maintain within such school district a separate free school for said colored children;" and the section goes on to say, in substance, that the term of such school and the advantages and privileges thereof shall be the same as provided for other schools of corresponding grade. "Should any school board neglect or refuse to comply with the provisions of this section, such school district shall be deprived of any part of the public funds for the next ensuing school year." The second section provides that, "when the number of colored children of school age residing in any school district shall be less than fifteen, they shall have the privilege and are entitled to attend school in any district in the county wherein a school is maintained for colored children." Detailed provisions are then made whereby the district in which such children reside must pay its proper share of the expenses of maintaining the school in the other district which the children attend.

These statute laws simply carry out and put in operation the command of that section of our constitution before quoted, and the objection now made is leveled at the constitutional provision, and it is that which we are asked to strike down, because of the contention that it violates section 1 of the fourteenth amendment of the constitution of the United Staes, which 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."

This section treats of different and distinct subjects, and the defendants do not point out or indicate to us the clause upon which they rely. The clause which declares that all persons born or naturalized in the United States are citizens of the United States, and of the state wherein they reside, can have no application to the case in hand further than this, that it points out and makes a distinction between citizenship of the United States and citizenship of a state. The next clause ordains, that no state shall make or enforce any law which shall abridge the privileges or immunities of a citizen of the United States. The distinction just mentioned is carried into this provision, which relates, and relates only, to privileges and immunities of a citizen of the United States as distinguished from the privileges and immunities of a citizen of a state. *Slaughter-House Cases*, 16 Wall. 74; *Bradwell v. State*, 16 Wall. 130.

The common-school system of this state is a creature of the state constitution and the laws passed pursuant to its command. The right of children to attend the public schools and of parents to send their children to them is not a privilege or immunity belonging to a citizen of the United States, as such. It is a right created by the state, and a right belonging to citizens of this state, as such. It, therefore, follows that the clause in question is without application to the case in hand.

We then come to the last clause, which is prohibitory of state action. It says, nor shall any state deny to any person within its jurisdiction the equal protection of the laws. Speaking of this clause in its application to state legislation as to colored persons, Justice STRONG said: "What is this but declaring that the law in the states shall be the same for the black as for the white; that all persons,

whether colored or white, shall stand equal before the laws of the states, and, in regard to the colored race, for whose protection the amendment was primarily designed, that no discrimination shall be made against them by law because of their color?" *Strauder v. West Virginia*, 100 U. S. 303. We then come to the simple question whether our constitution and the statutes passed pursuant to it, requiring colored persons to attend schools established and maintained at public expense for the education of colored persons only, deny to such persons "equal protection of the laws."

It is to be observed in the first place that these persons are not denied the advantages of the public schools. The right to attend such schools and receive instruction thereat is guaranteed to them. The framers of the constitution and the people by their votes in adopting it, it is true, were of the opinion that it would be better to establish and maintain separate schools for colored children. The wisdom of the provision is no longer a matter of speculation. Under it, the colored children of the state have made a rapid stride in the way of education to the great gratification of every right-minded man. The schools for white and black persons are carried on at a great public expense, and it has been found expedient and necessary to divide them into classes. That separate schools may be established for male and female pupils cannot be doubted. No one would question the right of the legislature to provide eseparate schools for neglected children who are too far advanced in years to attend the primary department; for such separate schools would be to the great advantage of that class of pupils. So, too, schools may be classed according to the attainments of the attendants in the branches taught. That schools may be classed on these and other grounds without violating the clause of the federal constitution now in question, must be conceded. But it will be said the classification now in question is one based on color, and so it is; but the color carries with it natural race peculiarities which furnish the reason for the classification. These are differences in races, and between individuals of the same race, not created by human laws, some of which can never be eradicated. These differences create different social relations recognized by all well-organized governments. If we cast aside chimerical theories and look to practical results, it seems to us it must be conceded that separate schools for colored children is a regulation to their great advantage.

It is true Brummell's children must go three and one-half miles to reach a colored school, while no white child in the district is required to go further than two miles. The distance which these children must go to reach a colored school is a matter of inconvenience to them, but it is an inconvenience which must arise in any school system. The law does not undertake to establish a school within a given distance of anyone, white or black. The inequality in distances to be traveled by the children of different families is but an incident to any classification, and furnishes no substantial ground of complaint. *People ex rel. King v. Gallagher*, 93 N. Y. 438–451.

The fact must be kept in mind, for it lies at the foundation of this controversy, that the laws of this state do not exclude colored children from the public schools. Such children have all the school advantages and privileges that are afforded white children. The fact that the two races are separated for the purpose of receiving instruction deprives neither of any rights. It is but a reasonable regulation of the exercise of the right. As said in the case just cited, "Equality and not identity of privileges and rights is what is guaranteed to the citizen." Our conclusion is that the constitution and laws of this state providing for separate schools for colored children are not forbidden by, or in conflict with, the fourteenth amendment of the federal constitution; and the courts of last resort in several states have reached the same result. *People ex rel. King v. Gallagher, supra; State ex rel. Garnes v. McCann*, 21 Ohio St. 198; *Cory v. Carter*, 48 Ind. 328; *Ward v. Flood*, 48 Cal. 36.

A like result was reached in Massachusetts under a constitutional provision similar to the fourteenth amendment as to the question in hand. *Roberts v. The City of Boston*, 5 Cushing, 198. We are, also, of the opinion that our conclusion is in accord with the cases cited from the supreme court of the United States, the final arbiter of all such questions.

2. Brummell's minor children were made defendants, and the suit was prosecuted to final judgment against them, as well as against the other defendants, without the appointment of a guardian *ad litem* for the infants. After infant defendants have been served with process the suit cannot be further prosecuted until a guardian *ad litem* is appointed. R. S. 1879, sec. 3477. As to these minors,

whose names will be found in the record, the judgment is reversed, but as to the other defendants it is affirmed. All concur.

Mr. BLOCH. So, the separate but equal doctrine, enunciated and confirmed by justices so learned in the law that one of them has been a Republican President of the United States, and another, a chief judge of the court of last resort of New York State, had been a candidate for the Presidency on the Democratic ticket in 1908, became firmly established.

Can we of Georgia be blamed for depending upon a constitutional principle declared, ratified, and confirmed by William Howard Taft, Oliver Wendell Holmes, Brandeis, Harlan Fiske Stones, and so many other legal giants.

Depend upon it we did, most particularly when *Gong Lum* v. *Rice*, *supra*, was decided in 1927 by a unanimous court with an ex-President of the United States, who had also been dean of a great law school, Solicitor General of the United States, and a circuit judge, saying:

The right and power of the State to regulate the method of providing for the education of its youth at public expense is clear.

There was the application in 1927 of *Plessy* v. *Ferguson* to your public school system. We thought that by every principle of right, every principle of law, every principle of constitutional government, it had become a part of the Constitution just as if written into it.

Senator ERVIN. In view of the fact that a rather peculiar attempt has been made to distinguish *Gong Lum* v. *Rice* from the decision of May 1954, I will ask you whether or not it is your opinion as a lawyer the point of law involved in *Gong Lum* v. *Rice* was identical with the point of law involved in *Brown* v. *The Board of Education*.

Mr. BLOCH. In my opinion the point of law was exactly the same, and if you will read *Gong Lum* v. *Rice* closely, you will see where Chief Justice Taft recognized that the point of law was the same, that the same rule in *Plessy* v. *Ferguson* applied to the public school situation, and he said in the latter part of that decision—I wish I had it here but I have not—he said in the later part of his opinion, Mr. Chairman, that "the question is no longer an open one for discussion by this Court."

And yet the Court, 27 years later, reopened it and upset all that we had done on the basis of it. It is not just a matter of theory. It is not a matter of theory, sir, as I shall point out now. We depended on it. We depended on pronouncements by Chief Justice Taft and those other legal giants of the law. We depended on their construction of the Constitution of the United States just as if it had been written into the 14th amendment, if you have separate but equal facilities you are complying with the law.

We thought that that was the contract that had been made with us

Senator ERVIN. And on the basis of that decision, the various States levied taxes and issued bonds to the extent of hundreds of millions of dollars for the purpose of conducting their schools in the manner which the Supreme Court of the United States declared was entirely consistent with the 14th amendment.

Mr. BLOCH. Yes, sir. Just look what we did. Fortunately our minds were running right together there, and I have got that developed right here, sir.

We treated the situation just as if the United States of America had entered into a solemn, binding agreement with us by the terms

of which we could educate the children of Georgia, the white children in one school, the colored children in another—separate, but equal.

We proceeded accordingly. In 1927, I was a member of the Georgia House of Representatives. My dear friend, Senator Richard B. Russell, was speaker. Times were prosperous for those days. We were called the spendthrift legislature. We appropriated about $20 million for the support of the whole State government annually.

Six million dollars of this went to the common school. Today our annual appropriation is around $300 million. Georgia now spends more anually on its university system than it did on its whole State government 30 years ago. Georgia now spends annually on its public school system six times as much as it did on its whole State Government 30 years ago.

And most of this money comes from the white citizens of Georgia. As late as 1956, in my county of Bibb, total ad valorem taxes paid by white citizens was $2,702,762.24 (95.16 percent), by colored citizens $137,474.80 (8.84 percent).

A breakdown of the tax collected for the year 1956 by the tax commissioner for Fulton County, Atlanta, Ga., shows the amount paid by white taxpayers (ad valorem taxes) $13,478,611.35; and the amount paid by colored taxpayers, $377,373.09.

In Fulton County, the most populous county of the State, white taxpayers pay 97.276 percent of the tax, and colored taxpayers 2.724 percent of the tax. (Letter to me from Standish Thompson, tax commissioner, dated February 9, 1957, in response to my inquiry of January 30, 1957.)

Just last year in my county of Bibb, to show our good faith there, even after the segregation decision of 1954, we voted a bond issue for schools of over $4 million to be used for separate white and colored schools.

The State of Georgia established a State school building authority in the year 1951. This authority issues revenue certificates for the construction of schools. Since the program was put into operation, the State school building authority has deposited with the trustees for construction purposes $162,427,700.90.

In addition, the local school systems have deposited with the authority for application to construction, cash supplements totaling $4,234,568.22, which produces a total of $166,662,269.12 in construction which is ultimately to be completed under the jurisdiction of the authority.

The authority has spent for work already in place as of January 31, 1957, the sum of $127,647,697.70, divided among 135 city and county school systems, white and colored.

There is in my statement, sir, a table which follows immediately, which graphically shows what Georgia has done and is doing under the separate but equal program since its recovery from the ravages of the Reconstruction era, and it is important to know that we had a gap after this contract of 1927 was entered into.

I like to call it that. All of us remember that shortly after that, the depression ensued and we were lucky we were living and eating much less spending very much money on the schools or anything else.

Then the war came along from 1939 to 1945, and then the South began to develop. And from 1945 on, as the South developed, it spent

money on its schools, and it spent it lavishly, and it spent it without distinction as to race.

This table that is in my statement shows that the school facilities planned and completed under the State school building program shows 5,308 for whites and 5,381 for the colored, and breaks it down by years.

The point is, sir, that after 1927 and after we got the money to do it with, we proceeded on our part to carry out that contract which we had made, and then suddenly out of a clear sky, came this devastating decision of May 17, 1954, which said that all that you have done in the past 27 years has got to be thrown out the window.

(The table referred to is as follows:)

TABLE I.—*School facilities planned or completed under the State school building program (white race)*

Item	Number by period covered—			Total program
	Prior to Jan. 1, 1955	Jan. 1, 1955–Dec. 31, 1956	Jan. 1, 1957–Dec. 31, 1958	
Number of new plants	41	125	72	241
Number of additions to existing plants	44	150	95	289
Number of remodeling projects	9	94	76	179
Number of instructional units	1,042	2,597	1,669	5,308

TABLE II.—*School facilities planned or completed under the State school building program (Negro race)*

Item	Number by period covered—			Total program
	Prior to Jan. 1, 1955	Jan. 1, 1955–Dec. 31, 1956	Jan. 1, 1957–Dec. 31, 1958	
Number of new plants	21	141	105	267
Number of additions to existing plants	3	55	39	91
Number of remodeling projects	5	22	20	47
Number of instructional units	555	2,847	1,979	5,381

And even as in the early 19th century there was no complaint about slavery in the South so long as other people of other sections could engage in slave trading, in building, owning and operating ships to transport captured human beings from the coasts of Africa to the coasts of America to be sold in bondage to southern planters, so in the early 20th century there was no complaint about civil rights, no attempt to resurrect the unconstitutional laws of the Reconstruction era for adjudication in the present era, so long as the South was the Nation's economic problem No. 1.

Even in the New Deal era, and its succeeding years (1933–45) when Franklin Delano Roosevelt was President of the United States, there was no such agitation or effort. But with the end of World War II, the South began to emerge from its conquered province status, had ceased being the Nation's economic problem No. 1. Learning of our natural resources, learning of our climate permitting year-round work, indoors and out, our supply of ambitious, intelligent people ready, able, and willing to work, as their ancestors had, learning of our freedom from alien concepts of government, industry began to move South.

And as manufacturing began to supplant agriculture in the South, colored people of the South began to move north in such numbers as to create the balance of power in several non-Southern States, States whose names I need not call.

They are all well known to you. Then and then only did this civil rights chaos and confusion start. Then and then only did established principles of constitutional government begin to crumble.

And not only was the doctrine of *Plessy* v. *Ferguson* shattered. Even before that, the Supreme Court had reversed itself in the political field.

In 1935, in the case of *Grovey* v. *Townsend* (295 U. S. 45), the Supreme Court of the United States held that the 14th amendment was not violated by the customs and laws of the State of Texas providing for so-called white primaries. The opinion in that case was written by Justice Roberts. It was concurred in by Chief Justice Hughes, and Justices Van Devanter, McReynolds, Brandeis, Sutherland, Butler, Stone, and Cardozo, a unanimous decision.

Just 9 years later, in 1944, without a syllable of the statutes of Texas having been changed, without a syllable of the 14th amendment having been changed, the Supreme Court of the United States in *Smith* v. *Allwright* (321 U. S. 649) took back its ruling in *Grovey* v. *Townsend*——

Senator ERVIN. As I recall, that was the case in which Associate Justice Roberts stated in a dissenting opinion that a decision of the Supreme Court of the United States had become like a restricted railroad ticket, good for this day and trip only.

Mr. BLOCH. It was either in that case or in one handed down right about the same time, the Monarch case, it was one of the two where he used that, and strange to say, sir——

Senator ERVIN. By the way, Associate Justice Roberts was a Pennsylvanian. He was not a North Carolinian or a Georgian.

Mr. BLOCH. That is right, sir, he came from the great State of Pennsylvania. Let me show you something else funny about that as we come along about Justice Roberts.

Mr. SLAYMAN. Excuse me a moment, Mr. Bloch.

Mr. Chairman, the bell sounded 2 minutes ago that the Senate is in session, but I understand that a unanimous consent request is being made.

Senator ERVIN. I am going to assume that it is being granted also until we receive a notice to the contrary.

In other words, until the Sergeant at Arms comes over here to break up this meeting as an unlawful assembly, we will go on.

Mr. BLOCH. I will finish this paragraph right here and come back to Justice Roberts and those cases—I never noticed it before I started working to prepare this particular statement.

Just 9 years later, in 1944, without a syllable of the statutes of Texas having been changed, and without a syllable of the 14th amendment having been changed, the Supreme Court of the United States in *Smith* v. *Allwright* (321 U. S. 649), took back its ruling in *Grovey* v. *Townsend*, and held that the 14th amendment was violated by these Texas statutes, and that Negroes could vote in Texas primaries.

The latter decision was written by Justice Reed, and concurred in by Justices Black, Frankfurter, Douglas, Murphy, Jackson, Rutledge, and Chief Justice Stone, Justice Roberts dissenting.

The Constitution was the same—the laws of Texas were the same—only the personnel of the Court had changed. I am aware of the fact that the asserted reason for reexamining *Grovey* v. *Townsend* was the decision of the Supreme Court in *United States* v. *Classic* (313 U. S. 299 (1941)), a decision of a minority of the Court, only four Justices concurring therein.

Let me interpolate a thing that I think I remember correctly. The first one of those cases, *Grovey* v. *Townsend*, was written by a unanimous Court, the opinion written by Justice Roberts. Six years later they come along in the Classic case which is a Louisiana case having to do with primaries in Louisiana, and the Supreme Court in a 4 to 3 decision, not even a 5 to 4 decision, in a 4 to 3 decision, held that the Newberry case was not applicable, and that that man who had been indicted down there for not letting a colored man vote, or counting his vote right in a primary, could be indicted under the Federal statutes regulated by a different section of the Constitution than the 14th amendment, by that section of the Constitution which deals with the right to vote in a Federal election.

Justice Roberts was one of the four who concurred in that decision.

Now you come along a little later, and in *Smith* v. *Allright* in 1944, and by an 8 to 1 decision the Supreme Court of the United States says "Oh, *Grovey* v. *Townsend* has been taken back by the Classic case and therefore we are going to take it back," and the man who participated in the majority—I think I am right about this—in the Classic case, was the only dissenter, the man who had written the opinion in *Grovey* v. *Townsend*.

But, regardless of the reason for the reversal of *Grovey* v. *Townsend*, it was reversed. Those who did not approve the decision in *Grovey* v. *Townsend* did not accept it as the law of the land, they attempted to vote in a white primary, and then attacked it so vigorously that it is no longer the "law of the land."

And in the field of law schools the Court had changed.

In 1938, the Court, composed of Chief Justice Hughes, and Justices McReynolds, Butler, Stone, Roberts, Black, Reed Van DeVanter, and Brandeis, in the case of *State of Missouri ex rel. Gaines* v. *Canada* (305 U. S. 232), held that the petitioner there was entitled to be admitted to a law school of the State university in the absence of other and proper provision for legal training within the State.

In other words, what the Supreme Court of the United States there held in 1938 was that if you have a separate and equal law school for Negroes within your State, within the bounds of Missouri, that is all right.

The colored man cannot complain under the 14th amendment if you will do that for him, but you cannot send him out of the State. That is what *State ex rel Gaines* v. *Canada* decided, and that was in the State of Missouri, too.

Twelve years later, in the case of *Sweatt* v. *Painter* (339 U. S. 629), the Court, composed of Chief Justice Vinson and Justices Black, Reed, Frankfurter, Douglas, Jackson, Burton, Clark, and Minton, ignored the provision in the former case of "other and proper provision for legal training within the State" and said:

We hold that the equal protection clause of the 14th amendment requires that the petitioner be admitted to the University of Texas Law School.

Your Honor will remember, I believe, that was the first time, either there or in the *McLaurin* case which was decided about the same time with respect to graduate schools, that was the first time that the right of association came into the law which had been specifically denied by the Justices of the Court of Appeals of New York 30 or 40 years before.

This case was decided in 1950. The only justices on the Court who had been there in 1938, at the time of the prior decision, were Justices Black and Reed. They had not dissented in the prior decision.

Why is it, then, that we of the South are supposed to supinely submit to the judicial repeal of solemn constitutional precedents which have been our Nation's guide for generations. Why have we not the right to use every constitutional legal means to demonstrate to the Congress and the courts that these decisions are constitutionally, legally, and morally wrong?

We have the right I say morally because on the basis of them we have spent these millions, when you take all the States of the South, the 11 States of the old Confederacy, probably $1 billion has been spent on the thought that we had a right to have that when the Supreme Court of the United States speaks through a man like Chief Justice Taft, and concurred in by eight other Justices, we of the South had a right to believe that that was an agreement with us upon which we had a right to rely and to expend our hard-earned money, not only for the benefit of the white people but for the benefit of the colored people.

We have honestly tried during the past 10 or 20 years since we have been able to do it, we have honestly tried to observe the separate but equal doctrine.

We have the right to demonstrate that the constitutional legal principles declared by Taft, Waite, Holmes, Alton Parker, Brandeis, Fuller, Hughes, and those other departed judicial giants are to be preferred as a basis for constitutional government to the psychological principles announced by Myrdal, or any other of his type. The future of America will be far safer if based on the constitutional doctrines of Taft and other great American judges, rather than the psychological doctrines of Myrdal and other Swedish "investigators."

We have just as much right to demonstrate to the Congress and the courts that *Brown* v. *Topeka* is wrong as other people had to try to demonstrate that *Plessy* v. *Ferguson* was wrong.

We have just as much right to demonstrate to you that you have no constitutional right to regulate primaries, as other people had to try to demonstrate that *Grovey* v. *Townsend* was wrong.

Each one of the scores of decisions, reversed and overruled by the Supreme Court of the United States in recent years was temporarily just as much the law of the land as is *Brown* v. *Topeka.*

I know, and you as trained, experienced lawyers know that when the Constitution is ravished, the offspring is a monster—a horrible threatening monster.

If one group can today set aside the 10th amendment, another can tomorrow set aside the first, and the fifth, and all the others of the family comprising the Bill of Rights.

No minority group—whether it be racial, religious, sectional—is safe if the Constitution of the United States and time-honored decisions of the Supreme Court of the United States can be swept aside with the stroke of a pen.

If all of us are honestly trying to secure the best education possible for all children, white and colored, do we accomplish that purpose by a course of action which may lead to the abolition of public education in Georgia and many other Southern States?

Senator ERVIN. If you will pardon me before you go to a new matter, I am very much impressed by your rhetorical questions, which constitute, in effect, an assertion that if the Supreme Court can reverse a series of decisions at will the rights and liberties of no Americans, white or colored, are safe. In this connection, I think that the people of the United States would do well to read Washington's Farewell Address to the American people, which was delivered just as he was leaving the office of President of the United States.

In the course of his farewell address Washington pointed out that the Constitution was adopted to preserve liberty. He pointed out that the powers of government were distributed between the States and the Federal Government and between the executive, the judicial, and the legislative branches of the Federal Government. He then made a statement substantially like this: "If the American people are ever dissatisfied with the distribution of governmental powers under the Constitution, let them change the distribution by an amendment in the manner authorized by the Constitution itself.

"Let there be no change by usurpation, for although the change may be thought to be good in the first instance, it will promote evil because usurpation is the customary weapon by which free governments are destroyed."

When they drew the Constitution of the United States, the Founding Fathers put in provisions to protect the people, the States, and the Nation against usurpation or abuse of authority by the President and by the usurpation and abuse of authority by the Congress. But they put in no provisions to restrain the Federal courts. I was puzzled by this omission.

To get an answer to this problem, I went back to the Federalist, and I found there an answer given by Alexander Hamilton. It was pointed out in the Constitutional Convention of 1787 by many, including George Mason of Virginia and Elbridge Gerry of Massachusetts, that there were absolutely no limitations whatever in the Constitution upon the powers of the judges.

Elbridge Gerry asserted:

> There are no well defined limits of the judiciary powers, they seem to be left as a boundless ocean, that has broken over the chart of the Supreme Lawgiver, thus far shalt thou go and no further, and as they cannot be comprehended by the clearest capacity, or the most sagacious mind, it would be an Herculean labour to attempt to describe the dangers with which they are replete.

George Mason made this more specific objection:

> The judiciary of the United States is so constructed and extended as to absorb and destroy the judiciaries of the several States. * * *

Others declared, in substance, that under the Constitution the decisions of the Supreme Court of the United States would "not be in any manner subject to * * * revision or correction"; that "the power of

construing the laws" would enable the Supreme Court of the United States "to mould them into whatever shape it" should "think proper"; that the Supreme Court of the United States could "substitute" its "own pleasure" for the law of the land; and that the "errors and usurpations of the Supreme Court of the United States" would "be uncontrollable and remediless."

Alexander Hamilton rejected these arguments with this emphatic assertion: "The supposed danger of judiciary encroachments * * * is, in reality, a phantom." He declared, in essence, that this assertion was true because men selected to sit on the Supreme Court of the United States would "be chosen with a view to those qualifications which fit men for the stations of judges," and that they would give "that inflexible and uniform adherence" to legal rules "which we perceive to be indispensable in the courts of justice."

In elaborating this thesis, Alexander Hamilton said:

> It has been frequently remarked with great propriety, that a voluminous code of laws is one of the inconveniences necessarily connected with the advantages of a free government. To avoid an arbitrary discretion in the courts, it is indispensable that they should be bound down by strict rules and precedents, which serve to define and point out their duty in every particular case that comes before them; and it will readily be conceived, from the variety of controveries which grow out of the follow and wickedness of mankind, that the records of those precedents must unavoidably swell to a very considerable bulk, and must demand long and laborious study to acquire a competent knowledge of them. Hence, it is that there can be but few men in * * * society, who will have sufficient skill in the laws to qualify them for the station of judges.

By these remarks, Hamilton assured the several States that men selected to sit upon the Supreme Court of the United States would be able and willings to subject themselves to the restraint inherent in the judicial process. Experience makes this proposition indisputable: Although one may possess a brilliant intellect and be actuated by lofty motives, he is not qualified for the station of a judge in a government of laws unless he is able and willing to subject himself to the restraint inherent in the judicial process.

What is the restraint inherent in the judicial process? The answer to this query appears in the statements of Hamilton. The restraint inherent in the judicial process is the mental discipline which prompts a qualified occupant of a judicial office to lay aside his personal notion of what the law ought to be, and to base his decision on established legal precedents and rules.

How is this mental discipline acquired? The answer to this question likewise appears in the statements of Hamilton. This mental discipline is ordinarily the product of long and laborious legal work as a practicing lawyer, or long and laborious judicial work as a judge of an appellate court or a trial court of general jurisdiction. It is sometimes the product of long and laborious work as a teacher of law. It cannot be acquired by the occupancy of an executive or legislative office. And, unhappily, it can hardly be acquired by those who come or return to the law in late life after spending most of their mature years in other fields of endeavor.

The reasons why the mental discipline required to qualify one for a judicial office is ordinarily the product of long and laborious work as a practicing lawyer, or as an appellate judge, or as a judge of a court of general jurisdiction are rather obvious. Practicing lawyers and judges of courts of general jurisdiction perform their functions

in the workaday world where men and women live, move and have their being. To them, law is destitute of social value unless it has sufficient stability to afford reliable rules to govern the conduct of people, and unless it can be found with reasonable certainty in established legal precedents. An additional consideration implants respect for established legal precedents in the minds of judges in courts of general jurisdiction and all appellate judges other than those who sit upon the Supreme Court of the United States. These judges are accustomed to have their decisions reviewed by higher courts and are certain to be reminded by reversals that they are subject to what Chief Justice Bleckley of the Supreme Court of Georgia called "the fallibility which is inherent in all courts except those of last resort," if they attempt to substitute their personal notions of what they think the law ought to be for the law as it is laid down in established legal precedents.

The States accepted as valid Alexander Hamilton's positive assurance that men chosen to serve on the Supreme Court of the United States would subject themselves to the restraint inherent in the judicial process, and were thereby induced to ratify the Constitution notwithstanding the omission from that instrument of any express provision protecting the other branches of the Federal Government, the States, or the people against the aribitrary exercise of its judicial power by the Supreme Court.

For several generations next succeeding its utterance, the people of America had no reason to doubt the accuracy of Alexander Hamilton's assurance. With rare exceptions, the Presidents selected for membership upon the Supreme Court of the United States men who had long and laboriously participated in the administration of justice either as practicing lawyers or as judges of State courts or as judges of the Federal courts inferior to the Supreme Court. As a consequence, the overwhelming majority of the men called to serve upon the Supreme Court were able and willing to subject themselves to the restraint inherent in the judicial process and to perform their tasks in the light of the principle that it is the duty of the judge to interpret the law, not to make it.

I make this statement with profound regret: During recent years, the Supreme Court of the United States has manifested on several occasions a desire to make constitutions and laws rather than to interpret them.

The question naturally arises: Why should the Supreme Court of the United States prefer to make constitutions and laws rather than to interpret them?

The answer to this question appears in the assurance which Alexander Hamilton gave to the States when he was urging them to ratify the Constitution. It is simply this: The majority of the members of the Supreme Court during recent years have been either unable or unwilling to subject themselves to the restraint inherent in the judicial process.

When all is said, it is not surprising that this is so. The custom of past generations of appointing to membership upon the Supreme Court men who had worked long and laboriously in the administration of justice either as practicing lawyers or as State judges, or as judges of Federal courts inferior to the Supreme Court, has been more honored of late in its breach than in its observance.

All of the members of the Supreme Court during recent years have been men of high attainments and significant accomplishments. But the majority of them have not worked either long or laboriously as practicing lawyers, or as State judges or as judges of the Federal courts inferior to the Supreme Court. As a consequency, the majority of them have not undergone the mental discipline which enables a qualified occupant of a judicial office to lay aside his personal notions of what the law ought to be and to base his decisions on what the law has been declared to be in legal precedents.

The facts concerning the legal and judicial experience of the members of the Supreme Court which handed down the decision in *Brown* v. *Board of Education* are astounding. They are as follows:

1. No member of the Court as it was then constituted, ever served as a judge of a court of general jurisdiction, either State or Federal.

2. No member of the Court as it was then constituted, ever served as a judge upon an appellate court in any one of the 48 States; and

3. Only 1 of the 9 members of the court as it was then constituted, ever served as an appellate judge on any Federal court inferior to the Supreme Court before he was elevated to his office. Moreover, few of them had devoted their major efforts to the actual practice of law.

Pardon that long interruption.

Mr. BLOCH. Thank you. That mental discipline of which the chairman speaks so well is most beautifully illustrated in that case of *Gong Lum* v. *Rice*. There were nine Justices presided over by a Chief Justice who had been a judge of the Fourth Circuit Court of Appeals, who had been the dean of the law school, Yale Law School, who had been the President of the United States. He was a lawyer all of his life, a trained lawyer and a judge.

When he became Chief Justice of the United States after he had served as President for 4 years, that mental discipline was so strongly ingrained into him that when he came to write *Gong Lum* v. *Rice* he said: "This is no longer an unopen question."

Those are not just mere words, Senator. I heard a Representative in Congress say just not long ago that is not just semantics. People spend money, spend their lives on the basis of something being permanent. It is just as if the Congress of the United States should say today to me or to somebody else with respect to that park out there between this building and the Capitol, "You can have it for $100. Now do with it what you please."

And I go there and invest millions of dollars in erecting on there some sort of a commercial enterprise, millions of dollars, and another Congress comes along and says, "Oh, that Congress back there, they were just wrong about that. It is not good for people to have to look out the windows at this parking lot out there. You must give it up," without paying 1 cent of compensation.

That might sound ridiculous, but that is the situation, sir. Particularly in the light of the fact that that very 14th amendment about which we are talking has a clause in it as I recall it that says Congress may enforce this amendment by appropriate legislation.

Now the Congress, as you and I know, have never, except as far as the District of Columbia is concerned, the Congress has never sought to enforce it by appropriate legislation. Why? Because the Supreme Court of the United States in *Plessy* v. *Ferguson* and *Gong*

Lum v. *Rice* had laid down doctrines which had become a part of the 14th amendment, and therefore aren't we, you and I and all the rest in my State and the other Southern States, weren't we justified in believing that *Gong Lum* v. *Rice* and *Plessy* v. *Ferguson* were just as much a part of the 14th amendment as if the Congress of the United States had handed them down as legislative enactments?

The Congress accepted them as an implementation, so to speak, of the 14th amendment.

Another thing, Senator, I was so glad for the interruption because you reminded me of this.

As I say here, no minority group, whether it be racial, religious, sectional, is safe if the constitutional and time-honored decisions of the Supreme Court of the United States can be swept aside with a stroke of the pen.

In plain English, what disturbs me so is that so-called racial minorities, so-called religious minorities—if we would just stop talking about minorities and be one American people would be so much better off, but what I started off to say is this: Why don't they realize, why don't the minorities, whether they be of color or whether they be of religion, why don't they realize that their only safety is in the Constitution of the United States being observed. That very Bill of Rights of which the 10th amendment is a part—and I heard a Congressman of the United States speak of it the other day as the semantics of the 10th amendment—why don't they realize that from that Bill of Rights stems their right to worship and to speak and to write as they please?

If the 10th amendment is swept aside today, it won't be long, tomorrow or the next day, until a majority of a different notion gets control of either Congress or the courts, and the right to worship, the right to trial by jury, all of the rest of those sacred rights guaranteed by the 10th amendment are gone.

It is not a laughing matter when a constitutional right can be swept aside with a stroke of a pen, and the first ones to realize that it is not a laughing matter are those who are members of minority groups, whether they be racial or religious.

If all of us are trying to secure the best education possible for all children, white and colored, do we accomplish that purpose by a course of action which may lead to the abolition of public education in Georgia and many other States?

The Supreme Court has not said, and cannot say, that Georgia must establish an integrated system of schools, and permit white and colored children to attend them.

The Supreme Court has enjoined in certain cases what is considered in those cases to be discrimination forbidden by the 14th amendment.

Georgia, under its constituton, cannot levy taxes for mixed schools. The constitutional power to tax is for the support of a system of schools in which the races shall not be mixed.

This provision can be changed only by a vote of the people acting under the rights reserved to them by the 10th amendment. It is hardly conceivable that they will change that constitutional principle which was readopted in 1945.

So, if you continue to try to compel us to establish mixed schools by forbidding separate schools, you will force us to abandon the public education of our children.

Who will benefit from that?

Certainly the colored children whom you are presumably trying to help will not.

Justice Harlan speaking for a unanimous Supreme Court 58 years ago answered that proposition for us when he said:

> The colored schoolchildren of the county would not be advanced in the matter of their education by a decree compelling the defendant board to cease giving support to a high school for white children (175 U. S. at p. 544).

And neither is the good of colored people in the South, adult or children, helped by the constant effort to revive statutes originally passed in the heat of the Reconstruction era, statutes which Justice Frankfurter lately said—

> have been dismembered by partial repeal and loosely and blindly drafted in the first instance (342 U. S. 117, 121).

Justice Frankfurter said also in that case that—

> the Court's lodestar of adjudication has been that the statute should be construed so as to respect the proper balance between the States and the Federal Government in law enforcement.

That is one of the most recent pronouncements of the judicial branch of our Government on the subject.

The executive branch of the Government has also spoken. At New Orleans, October 13, 1952, our present President said:

> First I deplore and I will always resist Federal encroachment upon rights and affairs of the States. Second, I am gravely concerned over the threats to the States inherent in the growth of this power-hungry movement * * * (New York Times, October 14, 1952, p. 26, quoting General Eisenhower's speech at New Orleans, October 13, 1952).

The next day, speaking at Houston, Tex., he said:

> America was built by a robust and vigorous people.
>
> They operated first through the Original States and then through a balance of State and Federal powers. That balance was designed to keep as much of the government as close to the people as possible—no nation of free men was ever built from the top down—that system of government has served us well for 160 years—that system is one in which the States have a vital part.
>
> The preservation of local order, elbow room to produce and build, protection of our titles to land, the sacredness of our homes from intrusion, our right to get the best schooling for our children—we were secured these basic freedoms in the first instance by our State, our county, and our own home town.
>
> These are primarily affairs for logical—

sic—local probably intended—

> administration.
>
> We must keep them so. Otherwise an all-powerful Washington bureaucracy will rob us one by one of the whole bundle of our liberties. We must preserve and protect this matchless system of States united.

That was the President of the United States speaking.

Senator ERVIN. I would commend the reading of that speech to the Attorney General of the United States. He comes before this committee, and urges the Congress to adopt S. 83. When S. 83 is reduced to its ultimate meaning, it provides that this new injunctive proceeding is to operate if the Attorney General elects to bring suits. It is not to operate if the Attorney General elects not to bring suits.

In other words, the new Federal laws which S. 83 contemplates in parts 3 and 4 cannot be called into operation by any human being in the universe except the one man who happens to be the temporary occupant of the office of Attorney General of the United States.

If he shakes his head from left to right to signify that he does not elect to bring suit under the new procedure, suit cannot be brought.

On the other hand, if he shakes his head up and down to signify that he authorizes suit, suit will be brought.

So the Federal law comes into play or fails to come into play according to the unreviewable decision of one person, the Attorney General.

That is a power which a good man ought not to want, and a bad man ought not to have. In saying this, I am not reflecting in any way upon the present occupant of the office of Attorney General. Whether a law is good or bad is to be judged not by what a good man can do in its administration; but by the purposes to which a bad man can put it. If S. 83 is enacted by Congress, a bad man can use its provisions to intimidate election officials throughout the United States.

There is another strange provision in S. 83. I do not believe its counterpart can be found in any statute ever adopted by any legislative body in the United States. It reads as follows:

> The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether the party aggrieved shall have exhausted any administrative or other remedies.

What does this legal jargon mean in plain English? It means in plain English that the Attorney General is given the power in his uncontrolled discretion to nullify in any particular case State law prescribing administrative remedies, even though such State laws may be enacted in strict conformity to the powers of the States under State and Federal constitutions.

Most of us cherish the belief that we have a government of laws in which the rights of all people can be found in the law books rather than in the heads of any particular group of men.

But, the bill which the Attorney General urges us to pass does not provide for any government by law.

It does not even provide for a government by men. It provides for a government by the whim and caprice of the temporary occupant of the office of Attorney General.

We already have enough statutes on the books to enforce all the civil rights of everybody, either by criminal prosecution or by private actions or suits.

Where the Government prosecutes a man criminally, the accused has certain safeguards under the Constitution. He has the right to be indicted by a grand jury before he can be put on trial, the right to be tried by a petit jury, and the right to confront and cross-examine adverse witnesses. Moreover, he has these rights in a proceeding so constituted that his constitutional right of representation by counsel of his own choosing is assured. A person has the same safeguards, except that of indictment by grand jury, in a private action for damages. And in a private suit for injunctive relief, he has the right to trial by jury under existing law before he can be fined or sent to jail for criminal contempt.

The proponents of S. 83 advocate the enactment of legislation which would strike down at once "the whole bundle" of these constitutional and legal safeguards.

Under the new procedure which they champion the Attorney General would have the tremendous power to call the new Federal law

into operation or to refrain from calling the new Federal law into operation, as well as the tremendous power to strike down valid State law statutes or to allow them to stand. Moreover, the enactment of S. 83 would give the Attorney General a new proceeding by which he can by pass all of the constitutional and legal safeguards erected by our forefathers to protect American citizens against bureaucratic and judicial tyranny.

I feel that people like you and myself who are trying to keep these precious things in existence for all of the American people are fighting a battle not only in behalf of the people of the South, but also in behalf of all of the people of this country of all sections, both white and colored, and of all generations of Americans yet to come. If we adopt a law like S. 83, and repose this tremendous power in one human being who happens to be the temporary occupant of an office, we strike down or at least allow that one individual to bypass and detour around every safeguard we have to protect Americans of all races against bureaucratic and judicial tyranny.

The history of mankind shows it is necessary to erect safeguards against abuse of power by government, and that is the main reason why the Constitution was written and the Bill of Fights put in it.

Mr. BLOCH. Senator, you have just put your finger on the vital horror of that bill. I just do not believe that people realize the power bestowed upon the Attorney General, upon the man who happens to be Attorney General of the United States at a given time, by that bill which permits him to go before a Federal judge of his own choosing in a given State, and there, whether it be in North Carolina or Georgia, to make all school boards of the whole State, and maybe beyond the limits of the State——

Senator ERVIN. And all election boards also.

Mr. BLOCH. And all election boards parties dependent on a judge of his own choosing, and bypass the law as this permits him to do.

Some folks may laugh at that.

Senator ERVIN. Excuse me for this observation. The Attorney General says that all this accords with equity procedure. When the Founding Fathers drew the Constitution, they specified that Federal judicial power should extend to all cases in law and equity arising under the Constitution. No competent student of the history of the period will gainsay that if the Founding Fathers had ever had the faintest suspicion that equity would be distorted and perverted to by pass the constitutional safeguards they had established, the Constitution would never have been ratified by the States of the Union. That is what S. 83 does.

Mr. BLOCH. That is what it does, and folks laugh you know, and say "Look at those southerners squirm," but they don't realize that somebody else may be squirming tomorrow.

Senator ERVIN. If they destroy our rights today, theirs are destroyed tomorrow.

Mr. BLOCH. It is in the light of these pronouncements as you have so well developed them and added to them, from the two coordinate branches of our Government, we ask the legislative branch to analyze these bills.

Senator ERVIN. Perhaps it would be better for us to take a recess now until 2:30. Will that be all right with you?

Mr. BLOCH. That would suit me fine.

(Whereupon, at 12:40 p. m., the committee was recessed, to reconvene at 2:30 p. m. of the same day.)

AFTERNOON SESSION

(The hearing was resumed in room 424, Senate Office Building, at 2:30 p. m.)

Senator HRUSKA (presiding). The hearings will resume on the several bills which are ordinarily referred to as civil-rights legislation.

Mr. Bloch has very kindly consented to deferring to Senator Dirksen so that the Senator may proceed to another meeting as soon as he has completed his testimony.

Senator DIRKSEN. This should not take more than 15 minutes, perhaps not that long.

STATEMENT OF HON. EVERETT McKINLEY DIRKSEN, UNITED STATES SENATOR FROM THE STATE OF ILLINOIS

Senator DIRKSEN. Mr. Chairman, S. 83, which I sponsored along with 37 other Members of the Senate, is the minimum which we should seek to accomplish at the present session of Congress. This is a fluid issue. I know that others would like to go further. But as the old Chinese saying goes, "The longest journey begins with a single step." It is fair to assume that the whole civil-rights journal may be long, but I trust we can take this first step now.

TITLE I—COMMISSION ON CIVIL RIGHTS

There can scarcely be objection to the first title of S. 83, which provides for the establishment of a bipartisan Commission of six members to be appointed by the President. I say there can be no valid objection because in all the years of service here I have seen no resolution to create a factfinding commission which has been so carefully drafted to guard against possible abuses.

It is fair to assume that the President will appoint members possessed of restraint, sound judgment, probity, and a sense of objectivity. It is bipartisan. Members must be confirmed by the Senate. If a name is presented to which there is valid objection, it can be rejected. Hearings, investigations, and the appointment of subcommittees all require majority approval. Both parties must be represented on any subcommittee. The subpena power is restricted and safeguarded. Witnesses are adequately protected and so are those against whom complaint might be made. Such a group should be able to do an excellent, impartial, objective job in this controversial field.

TITLE II—ADDITIONAL ASSISTANT ATTORNEY GENERAL

This title would create one additional Assistant Attorney General. He must be confirmed by the Senate. It is unnecessary to create by law a Civil Rights Division and to so designate him. Section 295 of title 5 of the United States Code, as amended, creates seven Assistant Attorneys General. It does not create and assign them to special divisions. This can be done administratively. The testimony of the

Attorney General on this point is clear enough that a Civil Rights Division will be created and the assistant created by this bill placed in charge. The creation of this additional position is fully consonant with the growth of the country and with new problems which arise.

TITLE III—TO STRENGTHEN CIVIL RIGHTS STATUTES

This title seeks to enlarge the authority of the Attorney General in the enforcement of civil rights and to provide additional instruments for that purpose.

The whole title is but an amendment to statutes which have been in effect for many years. In fact, as far back as 1871, certain provisions were enacted to safeguard civil rights. Section 1985, of title 42 of the United States Code, bears the caption "Conspiracy to Interfere with Civil Rights."

This section, as it reads now, contains three subsections.

The first subsection seeks to protect persons holding office under the United States against conspiracy, force, threat, or intimidation in the discharge of their duties.

The second subsection seeks to provide similar protection for witnesses, grand and petit jurors, in bringing about the equal protection of the law.

The third subsection also deals with safeguarding the equal protection of the law, and particularly undertakes to protect the right to vote and, in all these cases, gives to the party injured or deprived of his rights, a cause of action for damages against any and all who may have so conspired.

That is the law. That is the law today. That has been the law for 86 years in one form or another. Its intent is perfectly clear. Whether it has been carried out or obstructed is quite another matter. It recognizes a fact which is too often forgotten; namely, the first clause in the 14th amendment to the Constitution, which makes every person born or naturalized in the United States, and subject to its jurisdiction, a citizen of the United States as well as of the State where he resides.

These statutes, enacted long ago, properly undertake to protect a person in his rights, be he an officer of the United States, a witness, a juror, or a person seeking to exercise his right to vote in a Federal election.

Title III of S. 83 merely adds to these provisions which have long been the law.

First, it sets forth that if a cause of action arises under the provisions which have been so long on the statute books the Attorney General may go into a United States district court and, in the name of the United States or in the name of the aggrieved person, institute a civil action for redress of the wrong and for relief. Such action might include an application for an injunction or restraining order, or other order.

This is not unusual. In the statute which prohibits the shipment of goods in interstate commerce produced with child labor, the Secretary of Labor, under the direction and control of the Attorney General, brings the action to enjoin such a practice.

How else shall it be effectively done? In the long interrogation of the Attorney General it was quite obvious that the principal con-

cern of the interrogator was not the person aggrieved or offended, but the person who might give the offense.

To withhold this authority from the Attorney General makes a mockery of the guaranties which have so long been carried on the statute books.

TITLE IV—PROTECTING THE RIGHT TO VOTE

Eighty-seven years ago the Congress by statute provided that a citizen of the United States who was qualified by law to vote shall be entitled and allowed to vote in any election without distinction of race, color, or previous condition of servitude, notwithstanding any constitution, law, usage, custom, or regulation to the contrary.

Here again we deal with a citizen of the United States. Moreover, he must be qualified by law to vote.

This title amends that statute and seeks to safeguard that right to vote against coercion, threat, or intimidation.

In the case of any election where a Federal official is to be nominated or elected, and it appears that a person is to be deprived of this right to vote, the Attorney General, in the name of the United States or in behalf of the aggrieved party, is authorized to institute civil action.

If the United States will not by every reasonable means protect the rights of a United States citizen, who will? If the Attorney General, as the chief law-enforcement officer of the United States, is not clothed with necessary powers to protect a United States citizen, how shall he be protected?

If the rights of a citizen of the United States are not adequately enforced, of what value are they?

To object to such a grant of authority is virtually to assert that these rights should not be enforced. And this makes a grim jest of the rights which we have so freely proclaimed to all the world and which we prize so highly.

I do not ask that at this time we do more than what is proposed in S. 83. The administration does not ask that we presently do more. But this much we must do, or else we become the target for effective propaganda by a brutal and godless ideology which can in truth proclaim to all the world that with one hand we seek to bring the benefits of freedom to a whole area of the world, while with the other those freedoms are snatched away at home.

Thank you, Mr. Chairman.

Senator HRUSKA. Senator Dirksen, there is some considerable concern on the part of some folks that the deprivation of trial by jury under the proceedings which are set forth in part 3 of S. 83 represents a very serious defect in this legislation.

Would you care to comment on that at greater length than you did in your statement?

Senator DIRKSEN. Not particularly, because the Attorney General has commented on it at great length, and I was present at the committee meeting the other morning when he was interrogated for nearly 3 hours by Senator Ervin. So that matter, I think, has been thoroughly explored by the Attorney General of the United States, so there is no particular purpose in my making any elaborate comment at this time because I believe there is enough on the record to cover that point.

Senator HRUSKA. And you, likewise, agree with the Attorney General that it would not be wise to specify that the additional Assistant Attorney General be assigned to certain specific duties and responsibilities?

Senator DIRKSEN. Well, I simply go back to the earlier statute I recited here, Mr. Chairman, where seven Assistant Attorneys General were created, and they were not designated to head up divisions, that was handled on an administrative basis, and I think it can be similarly done now.

Senator HRUSKA. So if it were handled in that manner in this instance, it would be a departure from what we have already done?

Senator DIRKSEN. Yes.

Senator HRUSKA. Thank you very much, Senator.

We will resume with the testimony of Mr. Bloch. Let the record show that Mr. Bloch has been previously sworn and is resuming his testimony.

STATEMENT OF CHARLES J. BLOCH, ATTORNEY AT LAW, MACON, GA.—Resumed

Mr. BLOCH. Mr. Chairman, in order to give the connection or the setting before the hearing recessed for lunch, I had just completed that part of my statement which dealt with pronouncements from the judiciary decisions of the Supreme Court of the United States, and also two talks which had been made by President Eisenhower on the subject of States rights during the 1952 campaign, one of them being a talk at New Orleans, La., and the other at Houston, Tex.

With that background, I will resume with my prepared statement.

In the light of these pronouncements from the two coordinate branches of our Government, we ask the legislative branch to analyze these bills.

Do the bills respect the proper balance between the States and the Federal Government in law enforcement?

Do they not constitute unconstitutional, unwarranted encroachment by the Federal Government upon the rights and affairs of the States?

Do they not represent another step in the growth of a power-hungry movement threatening the States and the people?

Do they not deal with matters which are primarily affairs for local administration?

Do they not tend to create an all-powerful Washington bureaucracy?

Do they preserve and protect the matchless system of States united?

The bill which is identified as subcommittee print, January 31, 1957, is entitled "A bill to secure, protect, and strengthen the civil rights accruing to individuals under the Constitution and laws of the United States."

Title I is "to protect the rights to political participation."

Section 101 amends title 18, United States Code, section 594, so as to read as rewritten in the bill.

That section is based on old title 18 (1940 edition), United States Code, section 61, 61q. Section 61 was derived from the act of August 2, 1939 (ch. 410, sec. 1; 53 Stat. 1147 (U. S. C. A., 1927 edition, title 18, pocket pt., p. 26)).

The amended section includes "primaries" as well as "elections" in its coverage. The Congress will perhaps deem that justified by the cases of *United States* v. *Classic* (313 U. S. 299), and *Terry* v. *Adams* (345 U. S. 461), despite the earlier *Newberry case* (256 U. S. 232) and despite the fact that Classic was decided by only four judges. It should be noted that even in *Terry* v. *Adams*, the second headnote (73 S. Ct. 810) is:

The 15th amendment erects no shield against merely private conduct however discriminatory or wrongful.

Section 102 amends section 2004 of the Revised Statutes (42 U. S. C. 1971) to read as rewritten in the bill. This was title 8, United States Code Annotated, section 31, derived from act of May 31, 1870. There seem to be four salient changes.

(*a*) The section would protect the right to qualify to vote (register), as well as actual voting;

(*b*) The section is extended to cover primaries;

(*c*) The section would protect against discrimination based on "religion or national origin" as well as race or color;

(*d*) In the new last sentence, the bill attempts to make the right to qualify and vote, as set forth therein, a right within the meaning of title 18, United States Code, section 242, and title 42, United States Code, section 1983. So, the bill attempts by legislative fiat to make a constitutional right out of something which is not.

There is no constitutional provision dealing with discriminations in voting arising out of "religion or national origin." The 15th amendment provides:

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.

The Supreme Court has several times held that the power of Congress over the right to vote in the several States is confined to the enforcement of the 15th amendment by preventing discrimination on account of race, color, or previous condition of servitude (*Neal* v. *Delaware* (103 U. S. 370); *Pope* v. *Williams* (193 U. S. 621); *Williams* v. *Mississippi* (170 U. S. 213); *Ex Parte Yarbrough* (110 U. S. 651); *U. S.* v. *Reese* (92 U. S. 214); *U. S.* v. *Cruikshank* (92 U. S. 542)).

Senator WATKINS. Pardon the interruption, but would you be willing in support of the amendment to strike out this reference to any of those other situations rather than what is contained in the 15th amendment?

Mr. BLOCH. Senator, of course, I have no right, I am a layman; I mean by that that I am not——

Senator WATKINS. I would not let that influence me one way or the other; we would just want you to give your views.

Mr. BLOCH. You mean, would I be willing, perfectly content with the legislation——

Senator WATKINS. No. No. I said, would you be willing to have taken out of this particular section that you have taken exception to, the references to the place of origin and religion?

Mr. BLOCH. I think that it would tend to make them more in line with the Constitution.

Senator WATKINS. You think that is in conflict with the Constitution, to say that you cannot discriminate against a man because of his religion or place of origin?

Mr. BLOCH. Yes, sir; I think that is so.

Senator WATKINS. Do you not think that is a very, very narrow view or interpretation of the Constitution?

Mr. BLOCH. No, sir; I do not think it is a narrow view at all, because the United States Government had no right at all to legislate with respect to voting in State elections, much less in primaries, until the 13th, 14th, and 15th amendments were adopted after the War Between the States, and therefore I think that the rights to legislate with respect to any State elecion is confined to the 15th amendment.

Senator WATKINS. All right.

Your objection goes to this section simply because it brings in these other things not contained in the 15th amendment?

Mr. BLOCH. No, sir; not "simply."

Senator WATKINS. Well, you are against the 15th amendment, as well?

Mr. BLOCH. Not "simply."

One of the reasons I am objecting is because it brings in things that the Congress——

Senator WATKINS. Well, suppose we eliminate that; then what?

Mr. BLOCH. Then we come to some other criticisms.

Senator WATKINS. All right.

In other words, you don't like it.

Mr. BLOCH. I am just against it.

Senator WATKINS. That is what I wanted to find out.

Mr. BLOCH. And that is one of the reasons.

Senator WATKINS. That is the best reason I ever heard.

Mr. BLOCH. Title 18, section 242, mentioned in the section reads:

> Whoever, under color of any law, statute * * * willfully subjects any inhabitant of any State * * * 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 * * * 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 * * * (based on title 18, U. S. C., 1940 edition, sec. 52, derived from act of May 31, 1870.)

So the amendment, I repeat, seeks to make a constitutional right out of something which is not. This is further demonstrated by the other section mentioned in the amended section to wit, title 42, United States Code, section 1983, formerly title 8, United States Code Annotated, section 43, which is:

> Every person who, under color of any statute * * * subjects or causes to be subjected any citizen of the United States or other person within 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.

This latter section was derived from the act of April 20, 1871.

In *Stefanelli* v. *Minard, et al.* ((1951) 342 U. S. 117), the Supreme Court dealt with this section in a case where an accused sought to enjoin in a Federal court the use of the fruit of an unlawful search by New Jersey police as evidence in a State court.

Justice Frankfurter wrote the opinion holding that the Federal courts should not intervene. (Justice Douglas dissented.) Justice Frankfurter said:

These considerations have informed our construction of the Civil Rights Act. This act has given rise to differences of application here. Such differences inhere in the attempt to construe the remaining fragments of a comprehensive enactment, dismembered by partial repeal and invalidity, loosely and blindly drafted in the first instance (we recently commented on the circumstances surrounding the enactment of this legislation in *United States* v. *Williams*, 341 U. S. 70 * * * and *Collins* v. *Hardyman*, 341 U. S. 651, 657) and drawing on the whole Constitution itself for scope and meaning. Regardless of differences in particular cases, however, the Court's lodestar of adjudication has been that the statute should be construed so as to respect the proper balance between the States and the Federal Government in law enforcement. *Screws* v. *United States* (325 U. S. 91, 108). * * * Only last term we reiterated our conviction that the Civil Rights Act was not to be used to centralize power so as to upset the Federal system. *Collins* v. *Hardyman* (341 U. S. 651, 658). Discretionary refusal to exercise equitable power under the act to interfere with State criminal prosecution is one of the devices we have sanctioned for preserving this balance * * *. And under this very section now involved, we have withheld relief in equity even when recognizing that comparable facts would create a cause of action for damages. Compare *Giles* v. *Harris* (189 U. S. 475) with *Lane* v. *Wilson* (307 U. S. 268).

Senator HRUSKA. At that point, Mr. Bloch, if I may interrupt, what is the meaning, what is the significance of "discretionary refusal," as used in the second to the last sentence on the page you have just read? Does that mean they would have the right to exercise that equitable power and therefore, presumably, it would be constitutional in nature, but that they feel that in the interest of policy rather than constitutional right, it would be better to refrain from using it?

Mr. BLOCH. That went a little further than that, Mr. Chairman. I take up *Giles* v. *Harris* right next, and I think perhaps that answers part of your question, and the rest of it is answered in another case I will refer to just after, so that your question may be answered logically.

Just after we deal with *Giles* v. *Harris*, I would like to call the committee's attention to another case.

Senator HRUSKA. That bears on that point?

Mr. BLOCH. That bears on that point; yes, sir.

Senator HRUSKA. Very well.

Mr. BLOCH. I might say this, sir, so that perhaps you gentlemen may better understand these cases.

Giles v. *Harris* was a petition for injunction, an equity case; *James* v. *Bowman* was a statutory suit for damages. The Court recognized the latter but declined to recognize the former.

Giles v. *Harris*, *supra*, referred to by Justice Frankfurter, involved a bill in equity brought by a colored man on behalf of himself—

and on behalf of more than 5,000 Negroe, citizens of the county of Montgomery, Ala., similarly situated and circumstanced as himself—

against the board of registrars of that county.

The prayer of the bill was that the defendants be required to enroll upon the voting list the names of the plaintiff and all other qualified members of his race. This was in 1902.

The opinion in the case was written by Justice Oliver Wendell Holmes, of Massachusetts, who had been a soldier of the North during the War Between the States. He said:

> The Supreme Court of the United States in Alabama has not jurisdiction of an action in equity brought by a colored man resident in Alabama on behalf of himself and other Negroes to compel the board of registrars to enroll their names upon the voting list of the county in which they reside under a constitution alleged to be contrary to the Constitution of the United States.

Justices Brewer, Brown, and Harlan dissented. So, apparently from the list of the justices of the Court at that time, those concurring were Chief Justice Fuller and Associate Justices White, Peckham, McKenna, and Day.

Now, the other case to which I alluded, Mr. Chairman, a few minutes ago, and which is not mentioned in the printed statement, but which I will be glad to give, is a case in 69 Federal Reporter at page 852. That was the case which arose in South Carolina, a similar case to the Alabama case, and the Chief Justice at that time, Chief Justice Fuller, acting as circuit justice, sat en banc with the 2 South Carolina judges or 2 judges of that circuit, and held this:

> A court of equity has no jurisdiction upon a bill asking relief in behalf of the plaintiff and of other citizens similarly situated to enjoin a county supervisor of registration from performing the duties prescribed by the State registration laws on the ground that such laws are unconstitutional and operate to deprive plaintiff and others of the right to vote.

Senator WATKINS. Is that case cited in your mimeograph here?

Mr. BLOCH. No, sir; it is not. The name of the case is *Green* v. *Mills* (69 Fed. 852).

Mr. SLAYMAN. Was that about 1902?

Mr. BLOCH. Well, about 1902, yes; Chief Justice Fuller was Chief Justice about that time.

And I say, while it is a Federal reported decision, circuit court decision, a 3-judge court, Chief Justice Fuller, Chief Justice of the United States, was sitting with these circuit judges as circuit justice.

Now, you will note there, Mr. Chairman, he uses the expression in that opinion "has no jurisdiction," that a "court of equity has no jurisdiction" and so does Mr. Justice Holmes in *Giles* v. *Harris* say that the court had no jurisdiction.

Now frankly I say to you that I think the reason that the court said, both courts said they had no jurisdiction was, as pointed out in both of these cases, that courts of equity ought not to interfere in matters which were purely political and would not interfere with matters which are purely political but, of course, I would be obliged to say if I were asked the question, that if the Congress saw fit to confer that jurisdiction on the courts of equity, the Congress would have a right to do it.

Senator WATKINS. You think we have the right to do it now?

Mr. BLOCH. You have a perfect legal right to do it. The question is, whether you want to exercise it.

Senator WATKINS. I see. It is a matter of policy; is it not?

Mr. BLOCH. I think it is a matter of judgment of the Senate, what they feel they ought to do. I think that the Congress has a perfect right to confer that jurisdiction on the courts of equity, but again I say——

Senator WATKINS. We ought not do it?

Mr. BLOCH. You ought not do it. As developed a little later, I do not content myself with the ex cathedra statement, but I give you some reasons.

Senator WATKINS. I assume you have some reasons which in your view are sound.

Mr. BLOCH. Yes; to me they are, and I hope they will be to you.

Senator WATKINS. Well, we will listen to you.

Mr. BLOCH. All right; thank you.

Senator HRUSKA. Well, Mr. Bloch, that was the purpose of my attempting to interrupt a little while ago.

If it is a matter of policy, the citation of these cases and quotations from them would not apply, especially in view of the language that is proposed for legislation here, conferring that equitable jurisdiction on the Federal courts in that particular instance—of what avail are those citations and quotations then?

Mr. BLOCH. They are of this avail, Senator. I was trying to be of such help as I might be to the committee and I was trying to give you the history of the subject as developed in Supreme Court decisions.

Senator HRUSKA. In sum and substance isn't the effect simply this, that there is not any statutory basis for equitable jurisdiction?

Mr. BLOCH. That is my view but somebody else that deals with it, Senator, perhaps might have the idea that the Congress has not the right to confer that equity.

Senator WATKINS. You have helped those of us who are in favor of this legislation then——

Mr. BLOCH. Well, I am sorry that you gentlemen were not here this morning, because we started off by saying what I was trying to do was to develop the facts from every angle.

Senator WATKINS. That is indeed fine and you have established the case on that point.

Mr. BLOCH. And you gentlemen are the judges to apply the law to facts.

Senator WATKINS. Well, it is a little different than that; we have to work on policies. We do not come in her completely without opinions, we are not exactly like a court. We try to be 100 percent objective when we start, and we start from that, but of course, we are somewhat partisan as there are other considerations and they are factors when heretofore we have made determinations with respect to matters of policy and I assume also with respect to matters of law, but the thing we are attempting to do is to stay within the bounds of the constitutional powers given, in these bills—for instance, the administration bill, and I or the cosponsors with——

Senator ERVIN. Pardon me, there are a whole lot of bills other than the administration bills and these decisions have a direct bearing on them.

Senator WATKINS. Well, that is wonderful, because I am in favor of the administration measures so——

Senator ERVIN. Subject to amendment.

Senator HRUSKA. Let the record show at this point that Senator Ervin has completed a speech on the floor which was a very excellent presentation; also that Senator Ervin having reentered the committee room, the duties and responsibilities of the Chair of this meeting are transferred from me to him forthwith.

Senator ERVIN. No, I will let you go ahead.

Senator WATKINS. You may find yourself somewhat handicapped sitting where you are.

Senator ERVIN. Well, I am somewhat used to a lowdown position—I will stay here. You go ahead, Senator.

Mr. BLOCH. Senator Watkins, if I may address you personally, during the hearing this morning, during the course of the discussion this morning, Senator Ervin alluded to the fact that the judiciary section of the Constitution conferred judicial powers in law and equity upon the Supreme Court of the United States and said—and in the inferior courts which Congress might from time to time ordain and establish, I believe is the language.

Well now, a very great argument could be made on the proposition that what the Constitution meant by "equity" at that time was the equity jurisdiction as it was known at the time of the Constitution of the United States and that the Congress might not have the power to enlarge the equity jurisdiction by such provisions as, with all respect to them, are contained in some of these bills.

Senator WATKINS. As I remember, the old adage that the equity powers were there for the purpose of correcting that wherein the law was deficient.

Mr. BLOCH. That is right.

Senator WATKINS. And as deficiencies developed as they went along, I would think that would be quite sufficient answer to that other argument. In other words, equity is not fixed, as we go along we find equitable situations or legal situations that have to be corrected. That is the general underlying principle, as I understand it, for equity.

Mr. BLOCH. I think equity is that branch of the science of jurisprudence which the law could not reach, rather than to correct situations.

Senator WATKINS. Well, situations, as they develop deficiencies, you correct those deficiencies, and equity as it developed over the years is still a vital living force to correcting situations as they have developed, not only those that have happened in the past but those that will occur in the future.

Mr. BLOCH. The reason, Senator, I answered so promptly a while ago that I thought Congress had the power to do it was that in this case I was quoting, *Stefanelli* v. *Minard*, Justice Frankfurter says:

> Discretionary refusal to exercise equitable power under the act—

so he seemed to think that the Court might have discretionary power even in the absence of statute, despite the decisions of the Court in *Giles* v. *Harris* and in *Green* v. *Mills*.

Senator WATKINS. Did he write the prevailing opinion in that case?

Mr. BLOCH. Yes. It was 8 to 1 and he wrote that opinion. Justice Douglas dissented.

Directly applicable to the proposed amended section in *James* v. *Bowman* (190 U. S. 127), holding unconstitutional section 5507 of the Revised Statutes (cf. present title 18, sec. 594) which was:

> Every person who prevents, hinders, controls, or intimidates another from exercising, or in exercising the right of suffrage, to whom that right is guaranteed by the 15th amendment to the Constitution of the United States, by means of bribery or threats of depriving such person of employment, etc. * * * shall be punished * * *.

The Court held the statute to be too comprehensive as an exercise of power under the 15th amendment.

That decision is controlling here, as the proposed amendment is even broader than that so nullified.

United States v. *Reese* ((1875) 92 U. S. 214) was written by Chief Justice Waite, concurred in by Justices Miller, Field, Bradley, Swayne, Davis, and Strong. That Justice Waite was no southern partisan is demonstrated by the Cotton case which appears in the same volume, *Lamar, Executor* v. *Browne, et al.* (92 U. S. 187).

The majority in the Reese case held:

(a) Rights and immunities created by or dependent upon the Constitution of the United States can be protected by Congress;

(b) The power of Congress to legislate at all upon the subject of voting at State elections rests upon the 15th amendment;

(c) That power can be exercised by providing a punishment only when the wrongful refusal is because of "race, color, or previous condition of servitude."

(d) The third and fourth sections of the act of May 31, 1870, not being confined in their operation to unlawful discrimination on account of race, color, or previous condition of servitude are beyond the limits of the 15th amendment, and are unauthorized.

In the light of these decisions, I wonder if the effort is going to be made to try to get a Court, differently constituted, to reverse itself once more, and overrule these decisions, and later ones following them.

Should the Congress enact a statute which, under previous decisions of the Court, is unconstitutional? Is that following "the law of the land"?

We respectfully submit that in the interests of constitutional government the Congress should be making efforts to have the Court return to the principle of stare decisis, summarized (U. S. C. A. Cons. art. 1, sec. 1 to sec. 9, p. 77) from the cases of *Missouri* v. *Illinois* (180 U. S. 219); *Provident Insurance Co.* v. *Massachusetts* (73 U. S. 611); *Martin* v. *Hunter* (1 Wheaton 351), as follows:

> Especially in cases of doubt, the solemn, deliverage, well considered, and long-settled decisions of the judiciary, and the quiet assent of the people to an unbroken and unvarying practice, ought to conclude the action of the courts in favor of a principle so established, even when the individual opinions of the judges would be different were the question res integra.

We respectfully submit that the Congress of the United States ought not to lend its support to groups whose announced purpose is the overturn of constitutional principles.

Senator HRUSKA. At that point, would not "constitutional interpretations" be more applicable than "constitutional principles"?

Mr. BLOCH. Well, my position is, Senator, that when constitutional interpretations are so often repeated, they become constitutional principles; that a constitutional interpretation acquiesced in over scores of years to my mind becomes a constitutional principle just as if it had been originally written into the Constitution.

Senator WATKINS. Well, if we ever were to make a mistake along the line of constitutional interpretation, then it would have to stay there for all time; would it not?

Mr. BLOCH. No, it would not have to stay.

Senator WATKINS. Well, how would you change that, by another constitutional amendment?

Mr. BLOCH. No, sir. But that is not my language, Senator. I did not draw that out of the clear sky. We discussed this morning

that Chief Justice Taft in the *Gong Lum* v. *Rice* case used almost that very same expression—perhaps I could get it before we are through—and I pointed out the expression to which I called Senator Ervin's attention in the morning session, it was worded about this effect, "That the matter has been so long established it ought not be disturbed," in a school case.

Senator ERVIN. What you have just read is simply a very fundamental application of the doctrine of stare decisis, which means that where an interpretation has been placed by the courts on a constitutional provision or statutes in previous decisions, judges should follow such interpretation and leave the changing of the established meaning of the constitutional provision or the statutes to the governmental agencies authorized by the Constitution to amend the Constitution or alter the statute.

Mr. BLOCH. Yes, sir; and what I have just read, "res integra" was a quotation from the United States Code Annotated, section on the Constitution, article I, sections 1 to 9, and was not my language. I quoted from that.

But I do think, Mr. Chairman and Senators, that when a provision of the Constitution has been repeatedly interpreted by the Court over a long period of years that it becomes so much a constitutional principle that people ought to be allowed to depend on it as being the law and that their rights ought to be governed by that.

Senator HRUSKA. Of course, if it becomes that solidly installed, then I share Senator Watkins' apprehension, that the only way to amend is by constitutional amendment, if we are going to hold to that interpretation of the situation, and I do not think that would fit in with our constitutional history, they would have to go through the pains of a formal constitutional amendment to correct something which was originated in that way.

Mr. BLOCH. Well, I do not think that I would go that far, to say that it would have to be done by constitutional amendment. Perhaps it ought to be done that way.

But to take, for example, the 14th amendment, upon which the Gong Lum case was based, that contains, as we discussed this morning, the provision that the Congress should have the right to implement, to enforce this article by appropriate legislation.

It may be that even after *Gong Lum* v. *Rice* in 1927, I believe it was, which followed *Plessy* v. *Ferguson* in 1896, even after 30 years of acquiescence in that doctrine, it might be that Congress under that section of the amendment would have the right to repeal *Gong Lum* v. *Rice* and *Plessy* v. *Ferguson* by statutory enactment; but with all respect to the Court, and certainly I am not going into any position of criticizing any court, with all respect to the Court, courts ought not too lightly overturn decisions of that long standing, in my opinion.

Senator ERVIN. However, the observations you quoted apply more directly to some of the provisions of the other bills rather than the so-called administration bill. For example, the so-called committee print is a bill which, as I interpret it, attempts to deal with individuals rather than State actions, and the observations quoted that are supposedly very appropriate to it.

Mr. BLOCH. I submit this to you without comment: In the Columbia Law School News, published by the students of the school of law, Columbia University, New York, issue of Thursday, January 17, 1957,

is an article (pp. 2–3), entitled, "Legal Research in Social Progress." It commences:

In 1935, consonant with what the less adventurous would call do-goodism, a group of law students approached Professor Gethorn and asked how they could put their training to use for some practical cause. After considerable discussion, the idea of a student effort to do legal research for organizations which strive for worthy social goals was agreed upon. And Legal Survey was born. From its inception, the survey has centered its activities in the fields of civil liberties, race relations, and human welfare in general. The organizations it serves, which it affectionately calls its clients, include: The National Association for the Advancement of Colored People, the American Jewish Congress, the American Jewish Committee, the New York Civil Liberties Union, and the United Nations.

Further in the article is:

That Legal Survey helped to lay the groundwork that eventually led to the final Supreme Court decisions abolishing racial segregation is one of its most gratifying and proudest achievements. Before the inception of the litigation, the group was asked by the NAACP to do research on the possibility of challenging the "separate but equal" doctrine announced in *Plessy* v. *Ferguson*. Our organization devoted itself exclusively to this one project that year.

Yet, we of the South, are told when we "challenge" *Brown* v. *Topeka*, and allied cases, that we are disobeying the law of the land.

Senator WATKINS. In other words, you want to reverse that and lead into social research?

Mr. BLOCH. No, sir, I am not doing social research. I am doing legal research. I am trying to say you ought to apply the Constitution as it has been repeatedly construed by the Supreme Court of the United States. I am not a social researcher, no, sir.

Senator WATKINS. A legal researcher?

Mr. BLOCH. A legal researcher.

Senator WATKINS. Well, that is what I understood, that they were doing legal research that might help social progress.

Mr. BLOCH. Well, let us see what else they say after that.

Senator WATKINS. Very well.

Mr. BLOCH. The article continues—they answer your question:

Members worked on such questions——

Senator WATKINS. If I may interrupt again, on this legal research, we have a position here, sort of a something that many of the people who do not study law get a little bit tired of—and I will admit that I happen to be doing a lot of legal work recently—I hope you will pardon my questions.

Mr. BLOCH. Senator, I relish questions and I repeat for your benefit a quotation I gave Senator Ervin this morning that I regard this, as a famous Georgia lawyer said, "It is the clash of mind upon mind which causes the spark of truth to scintillate." That is, I will assume what I was doing, Senator—"clash," I am not doing it very well, the "friction of mind on mind," let us put it.

The article continues:

Members worked on such questions as the nature of the action, who should be the plaintiff and even how the complaint should be drafted. The very theory upon which the actions were later litigated was developed by this work. The members probably did not realize that they were helping to set off a chain of events that would lead to a social revolution in America. Among the problems being currently researched are the legality of restrictive convenants in a housing development in Ohio, the right of citizen to a passport and the possible grounds upon which it can be denied, and the right of a teacher who refused to testify as to which of his fellows has been a member of a subversive group. But most

of Legal Survey's work this term has again been submitted to it by the NAACP. Attention is focused upon Virginia where the legislature has attempted to devise methods to circumvent the desegregation edict of the Supreme Cout. In addition to these so-called nullification bills, the Virginia Legislature has passed a series of acts designed to bring to an end the activities of the NAACP in that State, and thus eliminate one of the most effective challenges to the nullification statutes. We have been working on the means by which these statutes may be challenged.

The editorial board of the Columbia Law School News, at that time (January 17, 1957) included Chester Apy, Jr., William Yates, Martin J. Fribush, Joel Jay Rogge, Graham Miller, Emanuel Halper, and Henry G. Cohn.

Inasmuch as the National Association for the Advancement of Colored People and the United Nations are included in the list of clients of Legal Survey, I can't help but wonder if an effort will be made to support this bill—some of these bills, I should say—with the Charter of the United Nations.

Senator WATKINS. Some people may do that but I do not think the present members of this committee will do it.

Mr. BLOCH. I do not, either.

Senator WATKINS. We will not go to the United Nations——

Senator ERVIN. I believe that argument was made at the last session to sustain the supposed constitutionality of one of the bills.

Senator WATKINS. Citing the U. N. Charter as support?

Senator ERVIN. Yes.

Senator WATKINS. Of course, I do not know the minds of any members of this committee. I will admit that there are some decisions of the Supreme Court of the United States that I personally would like to see reversed, and we might get this Columbia organization to work on that 1, or 2 or 3 of them that I would like to see reversed and which I do not think very sound—but I have had to go along with them. And since as they go along and reverse once in a while, maybe they will get around to reversing some of the others that I have in mind.

Mr. BLOCH. Justice Tom Clark when Attorney General hinted at that posisbility. (Statement and Analysis by the Attorney General concerning the proposed Civil Rights Act of 1949 which was inserted at p. 157, et seq., of the hearings before Subcommittee No. 2 of the Judiciary Committee of July 13, 14, and 27, 1955 (Serial No. 11) in this language:)

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 14th amendment.

The italics are mine.

During a hearing before the Committee on the Judiciary of the House of Representatives during the 84th Congress, Attorney General Brownell appeared before the committee. His attention was called by Congressman Forrester of Georgia to Attorney General Clark's statement as it appeared at page 179 of the July 1955 hearings, Mr. Forrester stating:

Now, I apprehend that what the gentleman had in mind is that there are serious doubts as to the constitutionality or validity of any laws relating to an individual unless you incorporate into that and bring into that the United Nations Charter and the treaty laws (hearing of April 10, 1956).

The Attorney General answered:

Well, I have always felt, Congressman, that the most lawyerlike way to approach the antilynching problem would be through a constitutional amendment.

Congressman Forrester was interrupted, and never did ask the questions he evidently had in his mind:

(*a*) Would it be constitutional in the absence of a constitutional amendment;

(*b*) Would it be valid under the United Nations Charter?

Section 103 (a) gives a right of action for damages against any person violating the provisions of section 101. Section 103 (c) confers jurisdiction of such suits upon district courts of the United States regardless of the amount in controversy.

Senator WATKINS. Are you referring there now to one of these bills?

Mr. BLOCH. Yes, sir.

Senator WATKINS. Which one is it?

Mr. BLOCH. I think it was on the committee print bill. It is on page 3 of what I designate as the subcommittee print.

Senator WATKINS. Thank you.

Mr. BLOCH. Section 103 (b), a party injured or threatened to be injured by a violation of title 18, section 594, or title 42, United States Code, section 1971, may bring injunctive proceedings to prohibit or prevent such injury. It further provides the Attorney General of the United States, in the name of the United States but for the benefit of such party, may bring the injunction.

Section 103 (c) provides that the district courts of the United States "shall exercise" jurisdiction "without regard to whether the party aggrieved shall have exhausted any administrative or other remedies provided by law and without regard to the amount in controversy."

These provisions convert the Federal equity courts into administrative bureaus so far as "civil rights" matters are concerned.

They violate and supersede every concept of equity jurisprudence with respect to injunctions heretofore known. They were probably thought up by someone as an answer to Justice Frankfurter's decision in *Stefanelli* v. *Minard et al.*, supra.

From time almost immemorial the rule has been that injunction is an extratordinary power to be used sparingly and only in clear and plain cases (*Irvin* v. *Dixon*, 50 U. S. (10 Howard) 10).

Senator HRUSKA. Rendered what year, Mr. Bloch, approximately?

Mr. BLOCH. 50 U. S.—I guess it would be before 1860. I can put the year in there.

Senator HRUSKA. That is sufficient.

Senator WATKINS. Mr. Bloch, I have a note here regarding an engagement I have to fulfill, and I am just a little bit late. I am awfully sorry I have to leave because I am very much interested in your discuscussion.

Mr. BLOCH. Thank you. I am sorry, too.

Senator WATKINS. It is not in disrespect to you or any of your testimony that causes my leaving; I want you to understand that.

Mr. BLOCH. Thank you very much, Senator.

The Supreme Court of the United States, and all other appellate courts in the land, have repeatedly held that the courts should not intervene with the injunctive process unless in their judgment the need

for effective injunctive relief is clear, not "remote or speculative." See for example, *Eccles* v. *Peoples Bank* (333 U. S. 426), which is comparatively recent, within the last 8 or 10 years.

The Attorney General has said that such jurisdiction is warranted by the experience with the Sherman Act. I suggest to you that the provisions of this bill are not to be compared with the injunction features of the Sherman Act. (See title 15, United States Code, sections 4, 25, and 26.)

In the past few decades we have been steering clear of government by injunction. A striking example is the Norris-LaGuardia Act, United States Code, title 29, section 101, which provides:

> No court of the United States * * * shall have jurisdiction to issue any * * * injunction * * * in a case * * * growing out of labor disputes except in strict conformity to—

certain statutes.

If there should be enacted by the Congress any such unprecedented extension of the equitable powers and duties of the United States courts, it will mean 1 of 2 things: (*a*) The citizens of the Southern States are to be singled out for harassment by Federal injunctions, or (*b*) the theory of government by injunction will again be applied for the harassment of all citizens.

In either event, we can expect a multitude of contempt cases of which the recent Clinton, Tenn., case is only a sample.

From the substantive standpoint, the section is constitutionally void under the Reese case (92 U. S., supra), and under *James* v. *Bowman*, supra.

I wonder just what most Federal judges would think of a petition for injunction presented to him reading about like this:

> The petitioner shows that his name is _____. He is an inhabitant of Georgia. He is a Buddhist. John Jones and others are registrars of _____ County, Ga. They are threatening to deprive petition of his right to qualify to vote at a primary election to be held to nominate county officials in said county. They are so threatening on account of petitioner's religion. Wherefore, he prays that they be enjoined from depriving him of his right to qualify to vote.

Now, gentlemen, that may sound silly, but if you track the statute—which is all you have got to do under the present rules of Federal civil procedure—if you track the statute, that is all the petitioner would have to allege, in order to invoke the new equity powers of the Federal courts.

I was particularly struck with the language—and I am departing from the memorandum here—I was particularly struck by this language in section 103 (c), of this subcommittee print:

> The district courts of the United States shall have jurisdiction of proceedings brought pursuant to sections (a) and (b) and shall exercise such jurisdiction without regard to whether the party aggrieved shall have exhausted any administrative or other remedies provided by law and without regard to the amount of the matter in controversy.

Now, the reason that concerned me so was the use of the word "shall"—the second "shall"—"shall exercise such jurisdiction." As I read that section, if a person who thinks he is aggrieved brings a petition, a complaint of the nature I have outlined here in this statement to a Federal judge, the time-honored principle, the old equitable principle which goes back as long as there have been any courts of

equity, that the granting of an injunction is purely within the discretion of the chancellor is gone, and the judge no longer sits as a chancellor but sits as one who must exercise that equitable jurisdiction, and not only are nullified the precedents, those old precedents I discussed in the Chief Justice Fuller case and the Alabama case nullified, Mr. Chairman, by the first clause of section 103 (c); but the second clause goes further than merely wiping out those decisions, but it goes further and it eliminates all discretion that the chancellor might have on the subject of whether or not he should exercise jurisdiction, and it says he shall exercise it.

Senator HRUSKA. Mr. Bloch, would you consider under that language that the mere exercise of that power would be coequal to a granting of the requested relief?

Mr. BLOCH. Yes, sir. I do not see what else it could mean—"he shall exercise."

Senator HRUSKA. Then your idea is that that language would bind a Federal judge to accept for true without variation——

Mr. BLOCH. No, sir.

Senator HRUSKA. Any allegations which are set forth——

Mr. BLOCH. No, sir.

Senator HRUSKA. In the prayer for relief which is provided for in that section?

Mr. BLOCH. No, sir.

Senator HRUSKA. If that was not the intent, what else was?

Mr. BLOCH. Of course, he has to prove the allegation but upon proof of those allegations in that bill, then the traditional discretionary power of the chancellor is taken away.

Senator HRUSKA. Then I come back to my first question. Does it follow when a judge does exercise the power conferred in this statute that he must find in favor of the plaintiff?

Mr. BLOCH. That he must grant an injunction?

Senator HRUSKA. That he must grant an injunction.

Mr. BLOCH. Yes, sir; as I see it, that language takes away the discretionary power of a chancellor sitting as an equity judge.

Senator HRUSKA. Without the hearing of any testimony?

Mr. BLOCH. No, sir. Let me illustrate.

Senator HRUSKA. If he fails in his testimony the judge can turn down the prayer for relief; can he not?

Mr. BLOCH. Maybe I can explain it better as an illustration.

If I go to a court of equity, now, in Georgia and I think it is true of almost every other State in the Union, State and Federal courts, if I go into a court of equity, either State or Federal, and prove every word that is in my complaint and there is absolutely no proof to the contrary, or the proof is overwhelming that I have made out my complaint, still the judge sitting in the court of equity as a chancellor need not grant that injunction. He can exercise his discretion and he can balance the conveniences with respect to the granting or nongranting of the injunction.

Senator ERVIN. In other words, he can refuse to grant an injunction in the exercise of his discretion, notwithstanding the fact that he may find that the allegations of the bill of complaint are true?

Mr. BLOCH. That is it, certainly, and that is the law in Georgia and I think it is the law in almost every State in the Union, that is the general equitable principle, but it seems to me that section takes away

from the chancellor or from the judge any question with regard to his discretion, and if that complaint that I have just read there is proven, if there is evidence to support it, then he must grant the injunction with no discretion about it.

Senator HRUSKA. I am trying hard to follow you, Mr. Bloch, but I cannot quite see that the use of the words "exercise of jurisdiction" or "shall exercise such jurisdiction," quoting those words is the same as requiring the Federal judge to grant the relief prayed for.

Mr. BLOCH. Well, I have no right to argue with you, sir, of course, but if those words do not mean that, what do they mean, considering the phrase right before it, "the district courts of the United States shall have jurisdiction"?

Senator HRUSKA. That means they shall entertain it and hear proof and make a decision after the proof has been adduced.

Mr. BLOCH. Well, they have already said that the district courts of the United States shall have jurisdiction and shall exercise it. What is the use of saying both of them if they don't mean what I think they mean?

Mr. SLAYMAN. Mr. Chairman, with your permission, since I am chief counsel of the staff which is going to have to work on this language, perhaps Mr. Bloch would like to suggest some way of accomplishing what apparently the draftsmen wanted to accomplish here, since we are going to come back to all of this testimony in the record.

I do not quite follow Mr. Bloch. Regarding "shall have jurisdiction" and "shall exercise such jurisdiction"—why cannot that jurisdiction be exercised and the relief denied?

Suppose the complaint is essentially a non sequitur, suppose all of the allegations are proved but they are still beside the point, could not the Federal judge sitting simply deny the prayer for relief?

"Exercise such jurisdiction" does not, as I understand it, mean granting affirmative relief. It could mean hearing them out, requiring further show-cause and still denying the relief. Is that not possible under "exercise such jurisdiction"?

Mr. BLOCH. That is possible, yes.

Senator HRUSKA. That is the point that I was driving at but my effort must have been too feeble. I am grateful to counsel.

Mr. BLOCH. No, Senator, I got it when you talked to me, but that is possible, if the evidence is overwhelming in favor of the complainant and the judge denied the injunction, he might say, "The evidence here is overwhelming but I have got a discretion and I am not going to grant this injunction, unbalancing all conveniences, I am not going to grant it."

Senator HRUSKA. In effect he is saying that he is not going to be confused by the facts.

Mr. BLOCH. Well, saying that he is going to adhere to the old equitable principles. Now, in that case that you put, Mr. Slayman, would not the appellate court immediately view it and say, "You have got no discretion on that"? The way that statute reads, if the burden of the evidence is in favor of the plaintiff, you ought to grant that injunction just like in a common law case, you ought to find for the plaintiff, your discretionary powers are gone.

Mr. SLAYMAN. Well, would you want to suggest a way of stating that so that it is very clear that discretionary power is to be reserved?

Mr. BLOCH. Well, the best way to do it is just to eliminate the whole business.

Mr. SLAYMAN. Well, as Senator Watkins stated it, there may be something in the impression that you are opposed to the whole legislation before the committee.

Mr. BLOCH. Well, I do not mean to say—I am just against it. I am trying to give you the reasons.

Mr. SLAYMAN. And that would be one of the reasons?

Mr. BLOCH. Yes, and I have been giving reasons since this morning, this is not just an unreasonable statement, just a blunt statement that I am against it, because I am trying to give reasons; but here I think we have centered on something so minor in comparison to the general principles that it is just something I just threw in, really, it is minor in comparison to the whole scheme of the thing.

We hear a great deal of talk about congestion in the Federal courts and the need for more judges. If this is the start of the expansion of Federal equity jurisdiction, we don't know anything yet about the need for more judges.

Title II of the bill is—Commission on Civil Rights.

Section 201 (b) provides for the appointment of six members by the President by and with the consent of the Senate.

"Bipartisanship" seemingly is secured by the provision that the commission of 6, not more than 3 of the members shall at any one time be of the same political party. There is no geographical qualification. All 6 could be from one State, provided only that the political party test is applied. That does not, in the field of civil rights seem to be a criterion of impartiality.

In *Panama Refining Co.* v. *Ryan* (293 U. S. 388), the Supreme Court held unconstitutional an act of Congress delegating certain legislative powers to the executive. Justice Cardozo dissented, saying at page 435:

> There has been no grant to the executive of any roving commission to inquire into evils, and, then, upon discovering them, do anything he pleases.

In *Schricter Poultry Co.* (295 U. S. 495), an act of Congress permitting the setting up codes of practice by a commission was declared unconstitutional. Justice Cardozo concurred there saying:

> Here, in the case before us, is an attempted delegation not confined to any single act nor to any class or group of acts identified or described by reference to a standard. Here in effect is a roving commission to inquire into evils and upon discovery correct them.

In section 202 (a) of this bill we have a roving commission to inquire into evils. The Commission shall investigate allegations in writing (they need not be verified) that certain citizens of the United States are being deprived of their right to vote or that certain persons in the United States are voting illegally (by what standard is not set out), or are being subjected to unwarranted economic pressures by reason of their sex, color, race, religion, or national origin.

If sections 203 (a) to (f) are construed as giving to the Commission the power of correcting evils upon discovering them, then the bill is unconstitutional under the cases cited, and others of similar nature.

If, however, it be said that the Commission has no power of correction, then the validity of its creation must be determined by another rule of law applying to committees or commissions having powers of investigation only.

I will interpolate there. In my discussion of this section of the bill before the subcommittee of the House, counsel there pointed out a possible distinction between the *Ryan* case and the *Schricter* case on the one hand and the language of this bill on the other hand, saying that in the *Schricter* case and in the *Ryan* case that the Commissions were legislative commissions, that is, after they discovered the evils they had the right to prescribe regulations which had the force of law and that the Commission here established did not have any such power to issue regulations and therefore that the *Schricter* case and Justice Cardozo's case, the *Ryan* case, did not apply.

Well, I submit even though that be taken as true, if that is true, then nevertheless that Commission section of the bill is unconstitutional under another group of cases.

The limitation of the power of investigation deduced from many cases is that it must be germane to some matter concerning which the House conducting the investigation has power to act, whether such action be the enactment of statutes or something else, as long as it is not a mere inquisition into the affairs of private citizens. (See *Seymour* v. *United States*, 77 F. 2d 577; *United States* v. *Creech*, 21 F. Supp. 439; *McGrain* v. *Daugherty*, 273 U. S. 135; *Barry* v. *United States*, 279 U. S. 597, 613, 49 S. Ct. 452; *Kilbourn* v. *Thompson*, 103 U. S. 168; *Jurney* v. *McCracken*, 294 U. S. 125; 55 S. Ct. 375; *Sinclair* v. *The United States*, 279 U. S. 263, 291–4; 49 S. Ct. 268; *In re Chapman*, 166 U. S. 661, 668–672; U. S. C. A., art. 1, sec. 8, Cl. 18, note 21; *Fischler* v. *McCarthy*, 117 F. Supp. 643, 218 F. 2d 164).

Tested by this rule, this Commission would conduct a mere inquisition into the affairs of private citizens. The scope of the inquiries it is empowered to make exceed those upon which the Congress has power to act.

Even if we knew definitely what the phrase "unwarranted economic pressures" means, Congress is not empowered to legislate with respect to economic pressures unless they are defined by law and relate to a subject within the power of Congress to regulate. Certainly Congress has no power to act with respect to economic pressures brought upon persons by reason of "their sex" unless there be a violation of the 19th amendment. And certainly Congress has no power to act with respect to economic pressures to which persons may be subjected by reason of their religion or national origin.

The Commission is nothing more nor less than an inquisitory body conceived only for the purpose of harassment.

It is illegal in that the matters which it has authority to investigate are not germane to matters concerning which the Congress has power to act.

Now I skip over, Senator, and call attention to the most recent case that I have been able to find on the subject.

I might say this, Mr. Chairman, that after I testified before the House committee 2 weeks ago I was asked to submit a written memorandum with respect to the injunction proceedings and this Commission proceeding and I have done that, and it was in the course of making that investigation that I ran across a case which I had not found before, and that was the case of *Thomas Quinn* v. *United States of America* (349 U. S. 155), which was decided by the Supreme Court of the United States May 23, 1955.

The opinion was written by Chief Justice Warren.

There, Quinn had been convicted for contempt of Congress under title 2, United States Code Annotated, section 192, in the District of Columbia. That section provides for the punishment of any witness before a congressional committee "who * * * refuses to answer any question pertinent to the question under inquiry * * *." The court of appeals reversed the conviction and remanded the case for a new trial. Claiming that the court of appeals should have directed an acquittal, Quinn applied to the Supreme Court for certiorari. It was granted. For reasons shown in the opinion, the judgment of the court of appeals was reversed and the case remanded to the district court with directions to enter a judgment of acquittal.

Most important, here, is the following language of the Chief Justice at page 160 of the opinion, where he said:

There can be no doubt as to the power of Congress, by itself or through its committees, to investigate matters and conditions relating to contemplated legislation. This power, deeply rooted in American and English institutions, is indeed coextensive with the power to legislate. Without the power to investigate—including, of course, the authority to compel testimony, either through its own processes or through judicial trial, Congress could be seriously handicapped in its efforts to exercise its constitutional function wisely and effectively. But the power to investigate, broad as it may be, is also subject to recognized limitations. It cannot be used to inquire into private affairs unrelated to a valid legislative purpose. Nor does it extend into an area in which Congress is forbidden to legislate. Similarly, the power to investigate must not be confused with any of the powers of law enforcement; those powers are assigned under our Constitution to the executive and to the judiciary. Still further limitations on the power to investigate are found in the specific individual guaranties of the Bill of Rights, such as the fifth amendment's privilege against self-incrimination which is in issue here.

Cited in support of those rulings are: *Anderson* v. *Dunn*, (6 Wheaton 204); *In re Chapman* (166 U. S. 661); *McCrain* v. *Daugherty* (273 U. S. 135, 175).

And, at page 328 of the same case, *Kilbourn* v. *Thompson* (103 U. S. 168, 190); *United States* v. *Rumely* (335 U. S. 41, 46, 73 S. Ct. 543, 546).

Now, taking out the heart of that quotation—

but the power to investigate, broad as it may be, is also subject to recognized limitations. It cannot be used to inquire into private affairs unrelated to a valid legislative purpose. Nor does it extend into an area in which Congress is forbidden to legislate.

Now, that decision is not 2 years old yet and when you take it and apply it to section 202 (a) (1) that Commission shall investigate allegations in writing that certain citizens of the United States are being deprived of their right to vote or that certain citizens of the United States are voting illegally, or are being subjected to unwarranted economic pressures by reason of their sex, color, race, religion, or national origin, if you——

Senator ERVIN. Would you say that that language is so vague and indefinite that one is unable to tell by it whether it would or would not permit investigations of perfectly legal actions?

Mr. BLOCH. Yes, sir, to my mind a perfectly legal action might be an unwarranted economic pressure in the mind of somebody.

Senator ERVIN. In other words, it leaves it entirely to the members of the Commission to determine what is in their judgment an unwarranted economic pressure or what is illegal?

Mr. BLOCH. That is right.

Senator HRUSKA. Mr. Bloch, if that word "unwarranted" were changed to "illegal" that objection, however, would be obviated; would it not?

Mr. BLOCH. Well, I think it would still be bad.

Senator HRUSKA. Well, I mean with respect to the vagueness of "unwarranted economic pressures," if we had "illegal economic pressures," that particular phrase would be obviated?

Mr. BLOCH. Well, if it is "illegal economic pressures," then suppose you said "illegal," then you would still have the phrase "economic pressures" and who would determine what an "economic pressure" was?

Senator HRUSKA. The law which makes those actions or that act illegal——

Mr. BLOCH. The whole phrase would be modified by the word "illegal," by that adjective "illegal."

Senator HRUSKA. If necessary, say instead of "unwarranted economic pressures, say "unwarranted acts" or "illegal acts" rather than "economic pressures."

Mr. BLOCH. Well, then, it would still be faulty in my opinion, sir. Let us assume that it is "illegal acts." That cures the criticism of "unwarranted economic pressures," and then it says "by reason of sex, color, race, or national origin"—what right has Congress to investigate—I am asking a rhetorical question—what right has Congress to investigate with respect to an illegal act to which a person might be subjected by reason of their sex, religion, or national origin?

Senator HRUSKA. They still would have every right to do so if it falls within the purview of the 14th amendment, and section 202 is not limited to the 15th amendment; it embraces the 14th amendment.

Mr. BLOCH. The 14th amendment only applies to States.

Senator HRUSKA. That is correct and the actions investigated by this Commission could conceivably be actions which are those of one of the States or its agents; it does not say to the contrary, does it?

Mr. BLOCH. If it were confined to actions of the States, of course, it would come within the 14th amendment, but if it was applied to me or any other individual then it would be absolutely void.

Senator HRUSKA. That answers my question.

Mr. BLOCH. If you define "unwarranted economic pressures," assuming that is defined legally, we will say, then section 202 (a) (1) could only be used by the Commission to look into the deprivation of rights under the 14th amendment which would be rights which were being violated by States or somebody acting under State authority.

Mr. SLAYMAN. Excuse me, Mr. Chairman. You mean that such would be void under the Supreme Court decisions of the 14th amendment?

Senator ERVIN. I do not want anybody to render sex void.

Mr. BLOCH. No. No, I am not seeking to—the Senator amended it, I did not do it. He was asking something.

Mr. SLAYMAN. Well, with reference to that one point, you were talking about the invalidity of actions of individuals, that is, as distinct from actions of the States or subdivisions of States, and legal decisions you cited about invalidity. Did you mean, in connection with the Supreme Court decisions concerning the 14th amendment, that it is left in the air as to whether this would be constitutional or unconstitutional under other provisions?

Mr. BLOCH. Yes, and then I think when you take the whole business, when you take all of the duties of that Commission even if you patched up section 202 (a) (1), there would still be subject to constitutional attack and the mere patching up of 202 (a) (1) would not cure all the valid criticisms that could be made of it—valid criticisms, not just criticisms.

Senator HRUSKA. Senator Ervin, do you have any further question?

Senator ERVIN. No, sir; I do not. I want to thank Mr. Bloch for the very fine exposition he has given of his views with reference to the constitutional feature of the various articles of these bills, and to say that I think in so doing he has rendered a signal service to the country.

Senator HRUSKA. And I should like to join in the thought that this paper shows every evidence of a great deal of legal research and a great deal of discriminating selectivity in the authorities which are cited by you, Mr. Bloch, and I am very grateful for your appearance here.

If there is nothing further, then we will stand recessed until 10 o'clock tomorrow morning in room 155, Senate Office Building.

(Thereupon, at 4 p. m., the subcommittee recessed, to reconvene Thursday, February 21, 1957 at 10 a. m.)

CIVIL RIGHTS—1957

THURSDAY, FEBRUARY 21, 1957

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

The subcommittee met, pursuant to recess, at 10:05 a. m., in room 155, Senate Office Building, Senator Sam Ervin presiding.

Present: Senators Ervin (presiding), Hennings (chairman of the subcommittee), and Hruska.

Also present: Charles H. Slayman, Jr., chief counsel, Constitutional Rights Subcommittee; and Robert Young, staff member, Committee on the Judiciary.

Senator ERVIN. If there is no objection, the committee will proceed.

Senator HRUSKA. Very well, I am ready.

Senator ERVIN. I believe Senator Javits is the first witness. The committee will be glad to hear from you at this time, Senator.

STATEMENT OF HON. JACOB K. JAVITS, UNITED STATES SENATOR FROM THE STATE OF NEW YORK

Senator JAVITS. Mr. Chairman, I appreciate first the opportunity to testify before my colleagues on this very, very vital subject.

Senator HRUSKA. Senator, have you a copy of your statement?

Senator JAVITS. I have.

Senator Ervin, do you have a copy?

Senator ERVIN. I believe I have one in my file that was given several days ago.

Senator JAVITS. Mr. Chairman, enactment of civil rights legislation is possible at this session although Congress has passed no legislation in this area for the past four decades. But it can be accomplished only by determined bipartisan action.

Public feeling on this subject is more intense than ever before. I might say that is true on both sides.

Certainly the need for congressional action is there, since effective civil rights is a matter of the gravest consequence not alone to our domestic, but to our foreign policy.

The duty of the Congress in joining to guarantee civil rights can no longer be overlooked. The Executive and the judiciary have already made vitat contributions, especially in the last 10 years, to the enjoyment of their civil rights for all in the United States.

The Executive has dealt effectively with eliminating segregation in the District of Columbia, in railroad dining cars, in schools on military

posts and among civilian workers in military establishments, and in Federal employment.

The judiciary has ruled against segregation, in public schools, in parks and recreation areas, in District of Columbia restaurants, among other cases.

One of the most difficult barriers to the enactment of civil rights legislation to enable the Congress to do its part, has been the rule of the Senate allowing of filibusters against such legislation. This is now widely recognized throughout the country and the time is ripe for a change.

I believe the fundamental basis for a change has been laid by the declaration of the Vice President that the provisions of rule 22 exempting a debate on an amendment to the rules, to the other rules, from cloture of any kind, is unconstitutional. It is my deep conviction that the change in our rules should be accomplished by amending rule 22 of the Standing Rules of the Senate, to allow reasonable debate, and then permitting debate to be closed by a majority of the Senate.

That is the substance of Senator Douglas' resolution, Senate Resolution 17, which 15 other Senators and I have joined as sponsors. It is also the spirit of Senate Resolution 30, the Knowland-Johnson resolution with 39 sponsors, which, though I disagree with its terms, evidences the idea that filibuster days should be over.

Desirable as I believe an amendment of the rules to be—good morning, Mr. Chairman.

(Senator Hennings entered the room and assumed the chair.)

Senator HENNINGS. Good morning.

Had you started?

Senator JAVITS. I had, Senator.

Senator HENNINGS. Don't let me interrupt you. I wanted to make the explanation, the chairman yesterday had to be at the White House. I was there until almost noon at that meeting, and then there was a meeting of all the committee chairmen.

Senator ERVIN. I hope you gave the President good advice, and I hope he will take it. Being a Democrat, I don't think he has the opportunity to get advice ordinarily from people as sound as you are—civil rights excepted.

Senator HENNINGS. I wanted to account for my not having been here yet. There was not anything I could do about it. We were outlining our legislative program for the year, and all of the chairmen of the several committees were in meeting a good part of the afternoon.

Will you please continue with your statement?

Senator JAVITS. Mr. Chairman, Desirable as I believe an amendment of the rules to be, I also believe that the necessary determination will be shown in the Senate to see through to passage the administration's civil rights program, once it has been reported out of this committee, despite a filibuster, or to get the necessary 64 votes to concur in cloture of debate.

I might say that my own appraisal of the situation is that even those 64 votes are obtainable.

Accordingly I believe the measure should be brought up now. It should be reported out promptly and ahead of other civil rights proposals. I might say that I believe thoroughly in the group of civil rights bills in which I have joined with Senator Humphrey and others——

Senator HENNINGS. May I ask you one question, please, Senator Javits? You would include the so-called Commission on Civil Rights in that group which you refer to as the President's program?

Senator JAVITS. I would.

Now, Mr. Chairman, may I say in all fairness to any connotation which there is in calling it the President's program——

Senator HENNINGS. We take no pride in authorship.

Senator JAVITS. I would like to say that.

Senator HENNINGS. This is identification of the legislation.

Senator JAVITS. This is a program which the chairman of this subcommittee and others have had in mind for a long time, perhaps not in every detail but very much like it. This has always been a bipartisan effort.

Senator HENNINGS. This committee reported out, as you know, some four bills preceding the introduction of the so-called President's program?

Senator JAVITS. Exactly.

Senator HENNINGS. However, that is not important.

Senator JAVITS. I think it is, sir, to emphasize its support, and the only reason I call it the President's program is because——

Senator HENNINGS. It is perfectly proper that you do so. It emanated really from the Attorney General and I think largely was introduced under the sponsorship of Senator Dirksen and a number of other cosponsors in April.

Senator JAVITS. It has the advantage in that way of having the maximum amount of prestige behind it. I think that it should be made clear constantly to the country that yourself, Mr. Chairman, and others of your own views have been in the forefront of this fight even before this administration took office.

Senator HENNINGS. I thank the Senator for that statement.

Senator JAVITS. Now, for myself, I believe thoroughly in the group of civil rights bills in which I have joined with Senator Humphrey and others, including a FEPC, an antilynching, antipoll tax bill, a bill against assaults on uniformed personnel and the anti-peonage bill. But I also believe that it is equally important to break the ice of congressional inaction with effective measures on which the major amount of agreement is possible, and that is what I believe the President's program to be.

The administration has presented a civil-rights program that is moderate. Certainly it is the minimum which should be enacted at this time. At least it is a step forward by the branch of the Federal Government—the Congress—which has failed to move on this issue for so long as to seriously shake the confidence of millions of Americans.

The President's program has the capability of real effectiveness in civil rights, too.

Here I would like, if I may, Mr. Chairman, to speak from personal experience and experience in the State of New York, whose Attorney General I was until I came down here.

For the President's program relies heavily on conciliation, mediation, and technical assistance backed by law.

Experience in my own State of New York shows this to be a most effective method for securing civil rights.

Our history in New York is very briefly as follows: In 1945, the Ives-Quinn law was passed—that has the name of my senior colleague, Senator Ives, on it—establishing the State commission against discrimination.

New York became the first State to declare legislatively that all people should have an equal opportunity for a job without discrimination because of race, creed, or color.

This historic integration of peoples in their chance for employment was strengthened through the succeeding years by conciliation, mediation, and technical assistance with the legal compulsion provided by law used only as a last resort. Or perhaps more accurately, as a background.

Now here is our experience. In the period 1945 through 1956, 3,600 cases were referred to SCAD—we have a huge State, 16 million people, and so 3,600 cases I think itself negates the idea that the courts or commissions will be just drowned in cases.

Here in the biggest industrial State in the country, only 21 of the 3,600 went to the stage of formal proceedings and hearing. About 2,000 complaints were found after investigation to be unjustified, again a very significant matter because here is a State in which the political climate is very favorable to strong enforcement of civil-rights laws, and yet about two-thirds of these cases were thrown out by the commission itself on preliminary investigation.

In over 1,000 cases, action was required, but 98 percent of them were settled by persuasion and mediation.

Only 2 cases, according to my inquiries, 2 cases in 3,600, went to court for enforcement, and no case needed to be instituted under the misdemeanor sections of the law, which incidentally are administered by the attorney general.

Senator HENNINGS. What was the general nature of those cases, the two that went to court?

Senator JAVITS. The two which went to court according to my best recollection involved interpretations of the law as to whether they were applicable to particular cases, a question of the nuance of their particular applicability to a given state of facts.

Now in 1948, based upon our 1945 experience, we passed a Fair Educational Practices Act to prevent racial discrimination in nonsectarian colleges of the State. In 1950 we passed a measure to prevent discrimination in publicly assisted housing.

In 1952 we gave the same State commission authority to bar discrimination in places of public accommodation, resort, or amusement.

In 1955, we passed another law prohibiting discrimination in private housing developments financed with Government mortgage guaranties, and I might say we have two other statutes along the same lines, one dealing with National Guard, and the other dealing with some miscellaneous aspects of enforcement in the fundamental law.

It is my firm belief, Mr. Chairman, that the same technique, proven successful by experience, can be applied to other States and at the Federal level.

But we need action by the Congress to serve as the catalyst for starting civil-rights progress.

As a result of New York's 10-year experience with this whole program, there is general public acceptance now of the principle of job equality throughout the State.

We still have some civil-rights problems in New York, principally in integrating some of the schools in New York City and raising the quality of educational facilities in schools attended predominately by Negroes and Puerto Ricans.

But overall, New York has developed an outlook on civil rights by which we accept the constitutional guaranties of equal opportunity for all people as basic components in our social structure.

Mr. Chairman, I submit that that is probably the leading and most intensive experience in the United States.

One further point, Mr. Chairman, and then I shall conclude. As the Chair knows, I served for a long time in the House of Representatives on the Committee on Foreign Affairs, and so I have had personal contact with our foreign affairs problems.

Also I have traveled very extensively throughout the world many times on missions for the Foreign Affairs Committee otherwise.

Qualifying myself, Mr. Chairman, by that experience, in which I heard all of that secret testimony since 1947 when I was in the House of Representatives on every phase of the foreign policy of the United States, I make the following statement:

Our international stake in civil rights is perhaps the most important consideration of all—considering our struggle today to maintain international peace—certainly a vital consideration to the veterans of our country who have fought for peace and free institutions at such tremendous cost.

I saw this very clearly in November and December last year in Pakistan, India, south and southeast Asia where I traveled with my wife. The great contest between freedom and communism is over the approximately 1.2 billion largely Negro and Oriental population who occupy the underdeveloped areas of the Far East, the Middle East, and Africa.

One of the greatest arguments used by the Communist conspirators against our leadership of the free world with these peoples has been that if they follow the cause of freedom, they too will be subjected to segregaion which it is charged that we tolerate within certain areas of the United States; Federal civil-rights legislation is the best answer.

These people are, therefore, watching with the most pronounced concern our present internal struggle on civil rights.

Now, Mr. Chairman, I would like to interject there parenthetically that it is true that there are examples of discrimination in these countries; for example, you have the caste system in India. But we are talking now again not about the causes but about the results of a line of attack on us in these key undecided areas.

There is no question in my mind but that in countries like India and Pakistan, Thailand, and other similar countries, a sharp spotlight is fixed upon the civil-rights progress in the United States, and people feel themselves identified with that whole struggle here in terms of themselves in their countries.

We know, and I believe that they know, that they have everything to gain, the people in these countries, from our leadership, both material and moral. We need now, by the wisdom and effectiveness of our actions in the civil-rights field, to convince them of the meaning of freedom.

Success on civil rights at home can turn out to be one of the most decisive influences for the victory of freedom in the world which we have it in our power to achieve.

In summary, Mr. Chairman, I would say that my own belief and the experience in the State of New York backs up the view that law is an essential backdrop for effective civil-rights guaranties, that they can be achieved very largely without force, provided that the backing of the sanction of the law is there, and finally, Mr. Chairman, I deeply believe that the President's program, the program called the President's program, can be passed in this session and such opposition as develops in the Senate can be met fairly and honestly, after very full debate.

I am sure there will be full debate. It does not take a filibuster to get full debate, but I really feel that the public feeling now is such, that so many Senators' own constituents feel pretty decidedly upon this issue in such a way that it can now be brought to pass.

Thank you, Mr. Chairman.

Senator HENNINGS. Thank you very much, Senator Javits.

Senator Ervin?

Senator ERVIN. I thought you had a State FEPC law in New York for a number of years before 1945?

Senator JAVITS. No, we got it in 1945.

Senator ERVIN. Was that the origin of it?

Senator JAVITS. That is the beginning of it.

Senator ERVIN. I have a recollection of reading the regulations that were promulgated under it. As I recall, one of the regulations was to the effect that the representative of an employer could not ask a prospective employee where he was during the First World War. Is that recollection correct?

Senator JAVITS. I will check it. You ask about a detail.

Senator ERVIN. It may be that if the employer asked that question, it might reveal that the applicant for employment was in the German or Austrian Army during the First World War and the employer might discriminate against him by giving the job to somebody who served in the American Army.

Senator JAVITS. I can hardly conceive of that because the FEPC deals solely with race, creed, color, or national origin.

Senator ERVIN. This was about race or national origin.

Senator JAVITS. Yes, it deals solely with employment.

Senator ERVIN. I believe if you go back to the original regulations you will find that provision.

Senator JAVITS. Senator, I will do that.

Senator HENNINGS. The Senator will supply that.

(Subsequently, the following material was received from Senator Javits, for inclusion in the record:)

SUMMARY REPORT ON RULINGS OF NEW YORK STATE COMMISSION AGAINST DISCRIMINATION WITH RESPECT TO PREEMPLOYMENT INQUIRIES

BASIC AUTHORITY FOR RULINGS ON PREEMPLOYMENT INQUIRIES

The basic source and authority for the rulings on preemployment inquiries is set forth in section 296.1 (c) of the law against discrimination, (executive law, article 15) which provides that it shall be an unlawful discriminatory practice for any employer or employment agency "to use any form of application for employment or to make any inquiry in connection with prospective employment,

which expresses, directly or indirectly, any limitation, specification, or discrimination as to race, creed, color, or national origin, or any intent to make any such limitation, specification, or discrimination, unless based upon a bona fide occupational qualification."

APPROACH OF COMMISSION

During the past 11 years of the administration of the law, the New York State Commission Against Discrimination has issued various rulings with respect to preemployment inquiries. These rulings constitute interpretations by the commission as to the legality of particular preemployment inquiries arising in cases coming before the commission. In making its interpretations, the commission has denominated the particular inquiries as "lawful" or "unlawful" and is in effect saying to those over whom it has jurisdiction that any preemployment inquiries which it has listed as "lawful" may be used without question but that if use is to be made of any inquiry which it has listed as "unlawful", the commission will question such usage and request its discontinuance unless there is factual support either for a claim that it does not express a limitation, specification, or discrimination of the kind prohibited by section 296.1 (c) of the law or for a claim that, if it does express such a limitation, specification, or discrimination, it is based on a bona fide occupational qualification.

The presentation to the commission of new facts relating to a particular inquiry which the commission has previously ruled to be unlawful may cause the commission to modify its ruling.

INQUIRY RE WHEREABOUTS OF APPLICANT DURING WORLD WAR I

In several cases coming before the commission, the employment application form contained an inquiry as to the whereabouts of an applicant for employment during the period surrounding World War I; that is, from 1914 to 1919. Under the particular facts and circumstances surrounding these cases, the commission ruled the inquiry to be "unlawful" because an answer to the inquiry would be likely to disclose the applicant's national origin.

Thus, for example, if an applicant stated that he was in the German Army or Russian army during the period of World War I, this answer would be indicative of the applicant's national origin. Consequently, unless there was a relevance between the applicant's national origin and the requirements of job performance sufficient to warrant the commission to grant a bona fide occupational qualification, the particular inquiry would be considered unlawful.

PROSPECTIVE EMPLOYMENT

The prohibition against making any inquiry concerning race, creed, color, or national origin of a prospective employee prior to employment does not apply to such inquiry made after employment provided the inquiry is for a proper purpose and the answer is not used as a basis for discriminatory practices during employment or for discharge from employment.

This distinction between inquiries prior to employment and inquiries after employment is based upon the statutory limitation of such prohibitions to inquiries made in connection with "prospective employment." However, any inquiry concerning race, creed, color, or national origin is unlawful when it is made in connection with upgrading in employment. The higher position is, in this respect, considered to be "prospective employment."

POLICY AS TO BONA FIDE OCCUPATIONAL QUALIFICATIONS IN PARTICULAR CIRCUMSTANCES

Where an inquiry, ruled "unlawful," is said to be required because, in the particular circumstances, an employer or employment agency deems such inquiry to be based upon a bona fide occupational qualification, the commission invites the submission of the issue to it for a ruling in advance of the use of the inquiry in question. In each instance, the ruling as to the existence of a bona fide occupational qualification has been limited to the particular respondent under the facts of the specific case.

The commission has followed the general principle that, subject to the particular facts in specific cases, the race, creed, color, or national origin of an employee or an applicant for employment will not be deemed a bona fide occupational qualification unless these factors are material to job performance.

CONTRACTS AFFECTING THE NATIONAL SECURITY

In connection with contracts affecting the national security, the commission has ruled that where a Federal agency, such as the United States Army, the United States Navy, the United States Air Force, or the United States Atomic Energy Commission requires an employer holding a contract with it to obtain specified information for prospective employees, such as place of birth, the required inquiries will be deemed to be based upon a bona fide occupational qualification.

In other words, if required inquiries, which ordinarily would be held to be unlawful, are being made pursuant to the direction of a Federal agency, whose functions involve the national security, the employer does not violate the law against discrimination. In this type of case, the commission ordinarily suggests to the employer that he obtains a statement from the Federal agency involved showing that it requires the employer to use a particular form of questionnaire or particular inquiries. The commission will issue a ruling to the employer that the inquiries required by the Federal agency are based upon a bona fide occupational qualification. The commission will, when it seems advisable, communicate with the Federal agency for independent confirmation of the necessity for such inquiries.

Senator ERVIN. Do you consider the present so-called administration bill, S. 83, the mildest bill?

Senator JAVITS. I consider it the minimum that ought to be enacted. I think really, Senator, that I do not like to speak of it in terms of the mildest bill because then that might imply that I am advocating the mildest bill.

I think we are dealing with realities. I think that the President's program can marshal the maximum amount of support. I deeply believe the maximum amount of support is necessary in order to get Senate action. Therefore, I am for what can be done.

Senator ERVIN. Many newspaper columnists and radio commentators infer that only southerners run filibusters and that filibusters are involved only against so-called civil-rights bills. I made an investigation of this matter and found that the filibuster had been used in the Senate 45 times. It has been used against so-called civil-rights bills only 9 times out of the 45. Four of the nine times it was used against a bill to outlaw the poll tax as a prerequisite to voting for Federal officials.. I also found that the only Supreme Court decision on that subject holds that a State has a constitutional right to impose a poll tax as a prerequisite to voting for Federal officials.

Therefore, the filibuster has been used against only 5 bills which could by any stretch of the imagination under the Supreme Court decision be said to be constitutional.

So much for the times the filibuster has been employed. I might add that when the filibuster is employed by people other than southerners they say that they employ it—I will not say "filibuster"—when protracted debate is employed by people other than southerners it is employed, so they say, for its educational value.

Then another thing about rule 22. Under rule 22, it takes 34 Senators to prevent a cloture, and unfortunately for the country, there are only 22 Senators from the entire South when none of us secede from the Confederacy. Consequently, it is an impossibility for us to prevent a vote on any legislative measure.

These observations are just clearing away undergrowth.

Senator JAVITS. Senator, I don't think they are just clearing away undergrowth. First as to the legality of anti-poll-tax legislation, I don't think it is at all novel in Federal law that a law is constitutional

which acts on a right which the States otherwise have in the absence of Federal enactment.

Therefore I see nothing whatsoever inconsistent between the anti-poll-tax bill and the constitutional right of the State to impose a poll tax according to these decisions.

Second, as to what you would call——

Senator ERVIN. Excuse me right there.

According to the only decision of the Supreme Court on the subject your view is not supportable.

Senator JAVITS. As I say, they have had occasion in line with their fundamental philosophy to depart from a number of these older cases, and I am confident they will in this, if there is any inconsistency.

As to "beneficent", as you put it, if I may in a word, as contrasted with what I might call nonbeneficent protracted debate, I am thoroughly in accord with a rule applicable to all. I think that debate should be reasonable for all measures, those I like and those I don't like as well, and I am quite prepared to vote that way, and I am the sponsor—am jointy sponsoring Senator Douglas' bill which makes cloture easier than the Knowland-Johnson proposal.

Finally, as to the capability for summoning enough support to support cloture, I think we are very likely to see very shortly whether that can really work.

I agree with the Senator that if there is enough sentiment in the country for it it will work, and I am very hopeful that there is.

Senator ERVIN. Do you realize that there are a great many civil-rights statutes on the books now?

Senator JAVITS. I do, exactly, and I think one of the strengths of the program which has been so widely discussed is that it seeks to implement the capability for enforcement in Federal courts with reliance upon a judge rather than with the necessary resort to what may find the local atmosphere interfering with enforcement—criminal penalties.

I think the civil-enforcement provisions of the program plus the Commission are its strongest points. That was our experience in New York when I was attorney general there. There were many cases in which we had both criminal and civil authority. We always found even in New York that you could get a lot further, quicker, and better with the civil authority.

Senator ERVIN. I want to say I commend your frankness in saying that the main reliance under the administration program is on the judge, and if I could have gotten the Attorney General of the United States to be as frank as you and admit that that was what the bill did, I could have avoided what some people wanted to call a filibuster on my part in his examination.

Senator JAVITS. Senator, I think the Attorney General assumes that you are such a capable lawyer that you would detect that yourself without his necessary admission.

Senator ERVIN. The administration bill, S. 83, would enable the Attorney General to do these things in cases now covered by criminal statutes, would it not?

First, substitute equitable proceedings for criminal prosecutions, and thus avoid the constitutional provision guaranteeing a man a right not to be tried for any felony without an indictment by the grand jury and the constitutional right giving him a trial by petit jury, and

the constitutional right which makes it certain that he be confronted by his accusers and given an opportunity to cross-examine them before he could be convicted and punished, isn't that so?

Senator JAVITS. No; I am sorry, I cannot agree with the Senator and for this reason: There would be no criminal prosecution. Hence the guaranties which are designed to protect people against criminal indictment and conviction would not be applicable because there would be no criminal prosecution.

Now as to the question of the forms of law, the right to answer, the right to be heard, the right to have the evidence tested, the right to have it reviewed, that is just as true in a civil as it is in a criminal proceeding.

Senator ERVIN. Don't you realize that under present law the Attorney General cannot bring an action of an equitable nature in the name of the United States for the enforcement of civil rights?

Senator JAVITS. I say that, Senator. I only point out that an action in the nature of an equitable action does not involve any individual in the jeopardy which he suffers in a criminal action.

Senator ERVIN. Yes.

Senator JAVITS. Hence it is not surrounded with exactly the same provisions of law in the Constitution.

Senator ERVIN. It enables him to be tried by the judge.

Senator JAVITS. But he is not tried, Senator. He is not tried at all. All he is given is a set of directions which he is asked to comply with, which is the mandate of a court. He is not tried and found guilty of anything.

Senator ERVIN. You mean there is no case about it in court?

Senator JAVITS. I did not say that, sir. I said there is no criminal case about it in court.

Senator ERVIN. The issues joined between the United States and the defendant——

Senator JAVITS. That is correct.

Senator ERVIN (continuing). Would be tried under this new proceeding by a judge without a jury, wouldn't it?

Senator JAVITS. Senator Ervin, of course they would be tried exactly the same way as if the same man sued the United States to recover a thousand dollars for a piece of property it had appropriated and would have the same significance in terms of his reputation, his future, as civil rights.

I am talking of his rights as a citizen. Convicted of a felony he loses those and so he is entitled to an indictment and all of the rights which the Bill of Rights gives him quite properly.

But I do not see at all how you can now draw in the whole concept of our jurisprudence dealing with civil actions and say that this has suddenly become a criminal action.

Senator ERVIN. Let me divide my question.

Senator JAVITS. Yes.

Senator ERVIN. If the method now provided by law for a crimina prosecution were pursued, the man would be entitled under the Constitution to have grand jurors pass on his case before he could be put on trial, wouldn't he?

Senator JAVITS. That is exactly right.

Senator ERVIN. And he would then be entitled to have his case tried before a petit jury which would have to give a unanimous verdict before he could be convicted, wouldn't he?

Senator JAVITS. Yes.

Senator ERVIN. And he would have a right to confront his accusers and to have them cross-examined, wouldn't he?

Senator JAVITS. Exactly right.

Senator ERVIN. Now, so there will be no confusion about it, the administration's bill recommended by the Attorney General, would enable the Attorney General at his election to travel a different path, wouldn't it?

Senator JAVITS. Yes.

Senator ERVIN. And by traveling that different path he could obtain adjudication from a judge without any indictment by a grand jury and without any trial before a petit jury and as far as the preliminary stages of the matter were concerned, that is with reference to restraining orders or temporary injunctions, he could have that heard on affidavits where there was no right or opportunity to cross-examine the witness, couldn't he?

Senator JAVITS. He might, depending upon the court.

Senator ERVIN. That is right.

Senator JAVITS. The court would have the discretion and it would be subject to review.

Senator ERVIN. It would be subject to review on the affidavits?

Senator JAVITS. Not—well, the appellate court could reverse it for failure to take testimony if it found the affidavits did not present the question adequately.

Senator ERVIN. It could and also it could affirm it on the basis of the affidavits, couldn't it?

Senator JAVITS. And it could also stay the injunction itself in an appellate court.

Senator, may I just point out to you, however, that the end result of what the Attorney General would get is as different in the civil proceeding from the criminal proceeding as day is from night.

The end result would be an injunction directing a person to do or refrain from doing an act whereas the end result in a criminal proceeding is moral attainder in terms of a conviction and a jail sentence or a fine or both, and under our jurisprudence as different as day and night.

Senator ERVIN. If a person should be charged with the violation of an injunction in a case brought by a private individual under existing Federal civil rights statutes, and the act allegedly done in violation of the injunction was also a crime, the party would have a right to be tried before a jury before he would be convicted of contempt and punished by either fine or imprisonment; wouldn't he?

Senator JAVITS. That is correct.

Senator ERVIN. But under this procedure he would not be entitled to trial by jury?

Senator JAVITS. Now you get into the field, Senator, as you know as a lawyer, of civil and criminal contempt.

Senator ERVIN. That is right.

Senator JAVITS. There are certain contempts in which he would be entitled to all of the protections of the criminal law. There are other

contempts in which the court could deal with it directly, contempt in the presence of a court, et cetera.

There again there would be full and adequate review in accordance with our laws, and you cannot say as a constant proposition that he would not have the jury and all of the other safeguards in the contempt proceeding, because he may very well if it is a criminal contempt.

Senator ERVIN. I would say you would be right if the administration's bill is not passed. But if the administration's bill is passed, he is denied the right to trial by jury in a criminal contempt. He could be put in jail by the judge without any trial by jury.

Senator JAVITS. In a criminal contempt he would usually get a trial by jury. In a civil contempt, that is a contempt in which the court could deal with itself, he might be punished. It would be a very much lesser punishment, of course, as we know the difference in the quality of it for violation of injunction, with all the rights of review. Where the United States is the plaintiff, it does present a different situation.

As the matter stands now, however, if you do not pass this law, our enforcement of these civil-rights statutes in many Southern States is, practically speaking, inoperative.

The Attorney General has said that. Therefore, as in all great democracies, there has to be a balance as between justice to the community and justice to the individual, and I think the essence and the strength of the Attorney General's position is that giving these civil remedies does preserve that balance.

Today the law is often flouted in some States because criminal prosecution is impossible.

Senator ERVIN. I happen to live in North Carolina, and I would deny that the law is being flouted in North Carolina.

Senator JAVITS. I did not speak of North Carolina, sir, and as a matter of fact it has been testified here that your State has a rather enviable record in this field.

I think in all fairness, I noticed that in the press the other day. But there are States, and we all know about those situations, in which the machinery of the criminal law has not been able to protect these rights guaranteed by it.

The Attorney General is seeking a way to do it, and I respectfully submit that this is an honorable and legitimate way in accordance with our law.

Senator ERVIN. He does have the power now, by criminal prosecution, to punish everybody who denies anybody their civil rights, doesn't he?

Senator JAVITS. Except that criminal prosecution, sir, has broken down in certain areas of the South where you just cannot get criminal action either by way of indictment or conviction.

I think, sir, that the Attorney General's testimony will have to stand on that score. I believe the Senator had a full opportunity to cross-examine the Attorney General, and, in my opinion, he has made out a case in respect of the breakdown.

Senator ERVIN. But I still do not know whether I understand that you concede that under the administration bill in an action brought in the name of the United States that a man charged with a violation

of civil-rights laws would be denied the right to trial by jury in case of a criminal contempt?

Senator JAVITS. I do not concede that, sir. I do not concede it at all. I think that we are following another remedy, a civil remedy, in accordance with the full protection which our law gives in those civil remedies and it does not result in the same moral attainder upon the individual for which our protections in criminal cases are designed.

Senator ERVIN. I was asking though about a matter of procedure.

Senator JAVITS. I understand.

Senator ERVIN. I understand you to say that your interpretation of the administration bill is that a man who is charged with a criminal contempt in one of the equity proceedings to be authorized by the bill would have a right to trial by jury in case of a criminal contempt?

Senator JAVITS. In the case of a criminal contempt he would follow whatever is the Federal procedure in those cases. If the Senator wishes, I shall be glad to give you my legal opinion on that subject. I would rather check it than speak off the top of my head.

Senator ERVIN. I am just trying to find out whether you investigated that question. Having spent my life in the law, I realize that no lawyer can carry all statutes and procedures around in his head; if he could he would be a most curious individual.

I would say that the Attorney General and myself reached 100 percent agreement on that point after much discussion.

Senator JAVITS. Of course by his lights and by mine there should be no reason why people who are concerned should not obey these injunctions.

Senator ERVIN. He also admitted that under certain conditions even a newspaper editor who wrote an editorial criticizing the issuance of an injunction could be punished for contempt of court.

Senator JAVITS. I heard you cross-examine the Attorney General upon this matter of conspiracy by two or more in respect to the anti-lynching law and you gave some humorous examples. I might say that this is true of all law. The question of seriousness of purpose and intent is always present.

For example, suppose a friend of yours just kiddingly reaches into your pocket and takes something out. That frequently happens. You know, friends fool around with each other. Now that is technically a taking which could meet the definition of a larceny of course, just like the example you gave the Attorney General. A couple of men get into an argument about religion. Of course our laws are susceptible of that kind of interpretation, but nobody stops from enforcing or enacting law because it is susceptible of being made ridiculous. You are dealing with fundamental human rights in very serious courts which are not going to be swept off their feet by any such thing.

Senator ERVIN. Don't you believe that the same procedure ought to be adopted in all kinds of criminal cases?

Senator JAVITS. I am sorry, Senator, I would not make any such generalization, being a lawyer. If the Senator will state his facts, I will be glad to respond to them.

Senator ERVIN. Don't you realize that under this act there is just one man in the universe who could determine whether the new statutory remedies would be used, and that man would be the Attorney General of the United States?

Senator JAVITS. This is perfectly true. At the same time only the President can determine to employ the Armed Forces of the United States. You get into the question of individual authority of individual officials and you can never end. Ninety-six of us can determine what is going to happen to the country, too.

Senator ERVIN. When the time comes for the President to employ the Armed Forces, the country usually knows about it; but this is something that the Attorney General determines in secret, isn't it?

Senator JAVITS. No, Senator, I can't agree with you at all. I don't think that there is any less of a spotlight of publicity upon the Attorney General of the United States or upon any Cabinet officer than there is upon the President.

I am sorry, sir, I can't go along.

Senator ERVIN. I was just saying the Attorney General makes his decision in secret on the basis of confidential reports submitted to him largely by the FBI, doesn't he?

Senator JAVITS. The President makes his decision by the same token upon reports submitted to him by the National Security Council and the Army, Navy, and Air Force.

Senator ERVIN. But usually the country knows something about it before he puts troops——

Senator JAVITS. I think the Attorney General would be in exactly the same position and all our history shows it. Look at the clamor about whether he does or does not act in any one of a hundred cases.

Senator ERVIN. You also realize that not only would the Attorney General have the sole uncontrolled discretion to bring or refuse to bring the new proceedings, but that under this bill if he does bring the new proceeding, the State laws prescribing administrative remedies become inoperative in that particular instance.

Senator JAVITS. That is true.

Senator HRUSKA. Would the Senator yield at that point?

Senator ERVIN. Yes.

Senator HRUSKA. Senator Javits, there are some implications to some of the questioning which has occurred this morning as well as some of the questions which have been propounded to Attorney General Brownell that I would like to, with Senator Ervin's indulgence, try to clear up a little bit.

We have reference here this morning again to the fact that when one is accused of a crime he is entitled to an indictment, he is entitled to a fair trial, a jury trial, and also to be confronted by his accusers and to be enabled to cross-examine them and so on, and we find that right guaranteed by the Constitution.

That is one of our constitutional procedures. We also find that embraced in those constitutional procedures are the rights of one who is accused, who finds himself accused of criminal contempt, that he has certain rights himself.

Those are within these constitutional procedures within this constitutional realm.

Now is it not true, Senator Javits, that the procedures with reference to civil contempt are also blessed with the sanctity and the sacredness of constitutional procedure, and are a part of those constitutional procedures just as fully and for just as long a period of time, as a matter of fact, as the criminal proceedings or the proceedings under criminal contempt?

Senator JAVITS. There is no question, Senator, if I understand your question correctly, the use of civil proceedings and what is done under them in terms of our law is just as traditional, just as old, just as firmly fixed, just as much accepted and is considered just as much a protection to the individual, though its terms are different, as the provisions relating to criminal prosecution.

Senator HRUSKA. That is precisely what I had in mind. So that when the bill calls for the praying for preventive relief in any of these proceedings, and there is a violation of an injunction or a restraining order, any proceeding taken to bring that man into court who would be guilty of violating that injunction, pursuant to the rules which apply to civil contempt, we have not something new, not something that is invented by this bill, but something that has been tried and that has been hammered out on the bars and the benches of the courtrooms for many hundreds of years.

Senator JAVITS. There is no question about it. And, Senator, if we are going to be legal philosophers for a minute, if I may just say one word on that, there is the greatest difference in the world in terms of social philosophy between a man who violates a general statute, if you are going to send him to jail or give him some heavy punishment to show that he did it with intent and purpose to violate.

That is one of the essentials of a crime. There is a great difference between that and the man who violates the specific order of a court which the court has made, after hearing facts, and so forth, directed to a particular ill, and specifically applicable to a specific situation in terms, a case like that and an injunction is subject to reversal, and hundreds and hundreds have been reversed in appellate courts because their terms were indefinite, so indefinite as not to give the person precise notice as to exactly what he was to do and not to do, so that there is the greatest difference, as you very properly point out, not only in the tradition as between civil and criminal proceedings, which you have so well described, but also in the very social philosophy which underlies the reason for it.

I think it is entirely valid, and I do not think the Attorney General is trying to do anything new at all.

On the contrary, he is invoking established procedure which is as time-honored in civil as it is in criminal proceedings.

Senator HRUSKA. Thank you very much.

Senator HENNINGS. Would anyone contend that the civil statutes supersede in stature or dignity the criminal or the——

Senator JAVITS. Not at all.

Senator HENNINGS. For example, the British common law—not only is truth required as a defense under the criminal prosecution, but it must be for the public benefit. We do not require the public benefit in our country.

Senator JAVITS. That is right.

Senator HENNINGS. In most States proof is sufficient.

Senator JAVITS. That is correct.

Senator HENNINGS. There is another analogy there.

Senator JAVITS. That is exactly correct, Senator.

Senator ERVIN. In its original form equity was only concerned with the protection of property rights, wasn't it?

Senator JAVITS. Way back, many hundreds of years ago.

Senator ERVIN. I will ask you as a lawyer if at the time of the adoption of the Constitution of the United States equity was not solely concerned with the protection of property rights and could not be used in any criminal prosecution.

Senator JAVITS. There is no question about the fact, sir, that equity could not be used in a criminal prosecution, except, as I recall it now—again you are speaking to me as a lawyer—the writ which appealed in a criminal prosecution to the conscience of a court, a writ *corum nobis*, I think is a very old one and predates the Constitution so that though the appeal in equity was not to the equity court, the appeal was to the equity power of a criminal court.

Senator HENNINGS. Doesn't that stem from British criminal law?

Senator JAVITS. Going back many centuries.

Senator ERVIN. Which was an effort to substitute for appeal in criminal cases?

Senator JAVITS. It appealed to the conscience of a court in the sense that the conviction had been had, the sentence had been made, in many cases the sentence was being served, and yet the court, for reasons above and beyond that, was asked to vacate the sentence and did under that writ, so that I cannot agree that you did not have inchoate rights protected by equity even going back of the Constitution.

Of course I think it is only fair to say, Senator, that our concept of property has changed. We consider today the right to a job as tantamount to a right of property. This is a very real new concept. Remember that a man could not vote years ago unless he had property, and that was true when we adopted the Constitution.

Now he can vote regardless of that, because he has other rights which are equivalent to property.

Senator ERVIN. Of course I think——

Senator HENNINGS. Mr. Hamilton, founder of the Republican Party or the Federalist Party, did not believe a man should vote unless he had property.

Senator ERVIN. Just one observation in this connection and I am through, and that is this: I respectfully disagree with the Senator from New York as to the administration's bill. I think that all civil right bills that have been proposed in modern times are bad in that each one of them undertakes to confer so-called civil rights on some groups of our citizens by denying in virtually every instance some very important civil rights of all Americans. I think that the bill recommended by the Attorney General is the worst of all because it is an effort to circumvent by equitable proceedings provisions which our ancestors considered such important safeguards that they put them in the Constitution.

We will have to concede that perhaps sections 4 and 5 might meet the test of the Constitution. They are, however, a perversion of the process of injunction. I for one think that the history of the United States in labor matters and other matters has shown that the most dangerous thing in the world is government by injunction.

All of these other bills undertake to enforce so-called civil rights by orthodox procedures.

They contemplate a resort to criminal and civil proceedings where all of the constitutional safeguards of litigants remain in full force and effect.

At this point, Mr. Chairman, I would like to have the privilege of inserting in the record in relation to this injunction power this extract from an article by Henry Clay Caldwell in the American Federationist, volume 17, page 385 and following.

Senator HENNINGS. Without objection, Senator Ervin, an article by Mr. Henry Clay Caldwell will be made a part of the record in these proceedings.

(The article is as follows:)

ON THE INJUNCTION POWER

The modern writ of injunction is used for purposes which bear no more resemblance to the uses of the ancient writ of that name than the milky way bears to the sun. Formerly it was used to conserve the property in dispute between private litigants, but in modern times it has taken the place of the police powers of the State and Nation. It enforces and restrains with equal facility the criminal laws of the State and Nation. With it the judge not only restrains and punishes the commission of crimes defined by statute, but he proceeds to frame a criminal code of his own, as extended as he sees proper, by which various acts, innocent in law and morals, are made criminal, such as standing, walking, or marching on the public highway, or talking, speaking, or preaching, and other like acts. *In proceedings for contempt for an alleged violation of the injunction the judge is the lawmaker, the injured party, the prosecutor, the judge, and the jury.* It is not surprising that uniting in himself all these characters he is commonly able to obtain a conviction. While the penalty which the judge can inflict by direct sentence for a violation of his code is fine or imprisonment limited only by his discretion, capital punishment may be inflicted by indirection. All that seems to be necessary to this end is to issue a writ to the marshal or sheriff commanding him to prevent a violation of the judge's code, and then the men with injunction nooses around their necks may be quickly dispatched if they attempt to march across this injunction deadline. It is said that the judge does not punish for a violation of the statutory offense but only for a violation of his order prohibiting the commission of the statutory offense. Such reasoning as this is what Carlyle calls logical cobwebbery. The web is not strong enough to deprive the smallest insect of its liberty, much less an American citizen.

The extent and use of this powerful writ finds its only limitation in that unknown quantity called judicial discretion touching which Lord Camden, one of England's greatest constitutional lawyers, said: "The discretion of a judge is the law of tyrants; it is always unknown; it is different in different men; it is casual and depends upon constitution, temper, and passion. In the best it is ofttimes caprice; in the worst it is every crime, folly, and passion to which human nature is liable." Mr. Burke pointed out the danger of investing "any sort of men" with jurisdiction limited only by their discretion. He said: "The spirit of any sort of men is not a fit rule for deciding on the bounds of their jurisdiction; first, because it is different in different men and even different in the same at different times, and can never become the proper directing line of law; and next because it is not reason but feeling, and when once it is irritated it is not apt to confine itself within its proper limits.

It is a curious and significant fact that *the reasons given for conferring on Federal judges the police powers of the State and denying to accused persons the right of trial by jury are precisely those given for the establishment of the court of star chamber.* Summed up in a few words, the reason for its creation as expressed in the preamble of the act of Parliament was to secure the certain and speedy punishment of all persons who in the opinion of the court deserved punishment, and to this end the court was invested with a large measure of the jurisdiction and discretion exercised by Federal chancellors in our day, and a trial by jury denied. Learned, able, and honest judges sat in that court, but never a jury. History records the result. Its methods grew to be as cruel and pitiless as those of the Inquisition itself; it would have put an end to the liberties of the English people if it had not been abolished. "Had there been no star chamber," says a distinguished English writer, "there would have been no rebellion against Charles I." The lesson taught by the history of the star chamber is that the rights and liberties of the people will not long survive in any country

where the administration of the law is committed exclusively to a caste endowed with boundless discretion and a long term of office, no matter how learned, able, and honest its members may be.

Every student of history knows that most of the sufferings and oppressions which mankind has had to endure were the work of honest and able, but misguided or ambitious men. Honesty and ability do not exempt from error, and when coupled with error they become dangerous gifts. After all, the human skull is but the temple of human errors, and judicial clay, if you analyze it well, will be found to be like all other human clay. The rule is without exception that whenever the excusive power of making or administrating the law is committed for any extended period to a single man or a few men—to a caste—the progressive restriction of the liberty of the people follows. The bond of sympathy between them and the people grows steadily weaker until the rights of the people are forgotten and the protection and interest of caste and classes become their chief concern. (From article by Henry Clay Caldwell in American Federationist, 17: 385–399, May 1910. Portion reprinted in The Reference Shelf. vol. V, Jury System, 89–92.)

Senator ERVIN. I also ask to have inserted in the record at this point an editorial entitled "Judge-Made Chaos," by David Lawrence, which appeared in the issue of U. S. News & World Report for December 28, 1956.

Senator HENNINGS. Without objection, this other exhibit from the U. S. News & World Report will be made a part of the record of these proceedings.

(The article is as follows:)

[U. S. News & World Report, December 21, 1956]

JUDGE-MADE CHAOS

By David Lawrence

The American people must stand aghast at the edict by a Federal judge that anyone who speaks his mind in urging nonattendance at a mixed school in Clinton, Tenn., may be guilty of contempt of court.

This means that, without a trial by jury, citizens in supposedly free American can be put in jail for their utterances. Free speech is thereby squelched and thought control imposed.

This is a sweeping and arbitrary extension of judicial power.

It is not sanctioned by any act of Congress.

It is not authorized anywhere in the Constitution.

The "supreme law of the land" today—and it has not been reversed by the Supreme Court of the United States—was laid down by two judges of the United States Circuit Court of Appeals and a district court judge in July 1955. The three-judge opinion of the court said, in part:

"The Constitution does not require integration. It merely forbids discrimination."

The school board in Clinton, Tenn., complied fully with the Supreme Court's order—it opened its doors to everyone, irrespective of race. Beyond that it did not need to go. A Federal judge there, however, evidently feels that his injunction, ordering nobody to "interfere" with "integration," covers also the acts and speeches of citizens and the distribution of printed matter anywhere in the community outside the school.

On Monday of last week an extraordinary thing happened in Clinton. Eugene Joyce, the county attorney of Anderson County, at the request of the school board, made a speech in which he read this Federal injunction to the assembled high-school students. The full text of his remarks, as stenographically recorded, appear on pages 59–61 of this issue. Certain passages are startling. The county attorney, for example, said:

"To my knowledge in all of American history it has never been necessary to read an instrument such as this, a Federal injunction, before an especially called assembly of a student body."

Mr. Joyce went on to say:

"Questions have been asked of me and other law-enforcement officials as to the enforcibility of this injunction. I think the actions of the past few weeks

or the past few days, particularly, speak in unmistakable language that this injunction is enforcible.

"The other question so frequently asked is: Will this injunction apply to students under 21 or to acts inside the high-school building? The answer is that this injunction has no limits; it applies to everyone, everywhere, be they minors, adults, inside or outside any building in this county."

Any reading of the text of the injunction confirms Mr. Joyce's view. It is in truth an injunction without limits. It covers every act and every speech or writing and every meeting of citizens in the community and county which a Federal judge—without jury trial—may decide to punish as violative of the spirit or purpose of the injunction itself.

It is important to note, moreover, that the county attorney told the students that, while the school principal would hereafter expel "any student that is guilty of misconduct," their troubles might not end there. He added:

"They (the members of the board of education) have also instructed the faculty to pass on to the Federal Bureau of Investigation any actions on behalf of the students that might be construed as violative of the injunction."

What a means of intimidation this Federal injunction turns out to be. In free America the boys and girls in a public high school are being taught, in effect, that State government has been abolished, county government has been abolished, and that an all-powerful dictatorship by the judiciary, acting upon "evidence" obtained through investigations made by the Federal secret police, will now suppress the right of any citizen even to talk about segregation or integration.

The students in Clinton thus are given a false picture of their own system of government. They are not taught that they have a right to express themselves for or against segregation or integration. They are not taught, moreover, that under the Federal Constitution any assault or misdemeanor or any form of intimidation or threat is a case for State and county prosecution unless the State of Tennessee intends to abdicate all responsibility for maintenance of law and order.

Nobody, of course, should condone violence. But under the Constitution it is the exclusive duty of the State to prosecute any criminal offenses committed within the State. This is the "supreme law of the land" as laid down again and again by the Supreme Court of the United States.

This whole chain of events, which has comes to a head in Clinton, Tenn., was forecast by James F. Byrnes, formerly an Associate Justice of the Supreme Court of the United States. In a speech on September 22 last, before the Vermont Bar Association, he declared that only Congress, by appropriate legislation, can enforce the 14th amendment. Mr. Byrnes added:

"But the Supreme Court that was unwilling (in 1954) to leave the amendment of the Constitution to the Congress and the States, as provided in that instrument, likewise was unwilling to leave to the Congress the enforcement of the 14th amendment. It has substituted for congressional legislation the power of the courts. That means the power of injunction. It is a dangerous power, often abused.

"Already the press reports a blanket injunction by a United States judge against the people of a community, prohibiting interference with the integration of a school.

"Assuming the report to be correct, it suggests many problems. What constitutes 'interference' may not be set forth in a court order in the precise language of a criminal statute. If left to the discretion of a judge, it will differ in various jurisdictions.

"Heretofore, a judge could imprison a citizen for contempt committed in his presence. For refusal to comply with an order directing an affirmative act, like turning over assets, a citizen could be imprisoned by a judge solely to coerce him into complying.

"But in cases of criminal contempt, or proposals to imprison as punishment for some act already done—not in the presence of the court—the citizen was entitled to a jury trial.

"Now it is evident efforts will be made to deny the citizen a jury trial. The precedents about to be established by the expansion of the injunctive power will have far-reaching effects. They may place new restrictions upon the right of free speech. Certainly they will raise serious questions for the leaders of organized labor.

"If the speech of a citizen urging students not to attend an integrated school is held violative of a court order enjoining interference and is punished by imprisonment without a jury trial, then what about a speech by a labor leader urging employees not to work when interference is similarly enjoined?

"As a result of the Supreme Court's decision, a district judge has the authority to enjoin school officials from refusing to admit a student solely because of his race or color. More than that he should not do. He should not set himself up as a glorified school administrator."

It is clear, moreover, from a reading of many decisions of the Supreme Court, that the 14th amendment can be enforced only by legislation passed by Congress.

Justice Jackson, speaking for the Court in a decision 10 years ago, emphasized that the fifth section of the 14th amendment specifically vests in Congress the authority to enforce it by statute. Citing an enforcement statute on certain phases of civil rights enacted by Congress on March 1, 1875, he wrote:

"This statute was a factor so decisive in establishing the Negro-case precedents that the Court even hinted that there might be no judicial power to intervene except in matters authorized by acts of Congress. Referring to the provision empowering Congress to enforce the 14th amendment, it said that 'all of the amendments derive much of their force from this latter provision. It is not said the judicial power of the general Government shall extend to enforcing the prohibitions and to protecting the rights and immunities guaranteed. It is not said that branch of the Government shall be authorized to declare void any action of a State in violation of the prohibitions. It is the power of Congress which has been enlarged. Congress is authorized to enforce the prohibitions by appropriate legislation.'"

Where are the so-called liberals of today in this controversy? They always are alert enough to raise their voices when a Communist sympathizer is dismissed from a Government post because he allegedly holds different "opinions" than his superiors. It usually is protested that the Federal Government is seeking to impose "thought control."

But not one of the civil-liberties organizations has cried out in protest against the patently outrageous extension of Federal authority in the Clinton injunction.

The Bill of Rights of the Constitution guarantees free speech, free assembly, and the right to a jury trial.

Do not the liberals believe in giving the boys and girls and their parents in Tennessee these rights?

Or do we have one standard for Communist sympathizers and another standard for loyal Americans who hitherto have been taught to believe that the States are responsible for the exercise of the police power in maintaining law and order within the States?

The Constitution plainly vests authority to enforce the 14th amendment only in Congress. This is the supreme law of the land today.

Is the legislative power of Congress to be circumvented by the subterfuge of a Federal injunction issued in an unprecedented era of judicial tyranny?

Extreme measures usually beget other extreme measures. Will the southern Members of Congress now try to amend the Department of Justice's appropriation bills at the next session and filibuster against their passage unless riders are adopted defining the limits of Federal and State authority?

Integration will never be accomplished at the point of a bayonet or by giving to the judiciary an enforcement power it has never possessed.

Judge-made law can only result in judge-made chaos.

A LAWYER ASKS: "IS A TENNESSEE JUDGE A ONE-MAN GOVERNMENT?"

How far can Federal judges go to force mixed schools in areas where public opinion is opposed?

Does the Constitution impose limits upon the power of judges to put citizens in jail without a trial by jury?

The extent of judicial power is being brought into question by action of the Federal Government to punish citizens of Clinton, Tenn., who oppose the mixing of races in the schools.

Issues involved are described by a prominent attorney in a communication to the Washington, D. C. Evening Star. The attorney preferred that his name not be used.

This communication, bearing on a subject of growing importance, is reprinted with permission of the Washington Evening Star.

Following is full text of a letter from a Washington, D. C. lawyer who signs himself "Publius," reprinted by permission from the Washington Evening Star of December 18, 1956:

The recent occurrences in Clinton, Tenn., raise some questions that go far beyond the problem of segregation in the schools—questions which should give any student of history and law pause to consider what results may well flow therefrom.

Of course, Prince John of England started out with some very worthy purposes. His brother, Richard the Lionhearted, had gone on the Third Crusade to preserve Christianity itself. This and other wars cost considerable money—more than England could afford.

John began to make levies for national defense and appointed judges who set aside all custom to get the money. Soon people were being grabbed on the streets, upon writs issued by the King's judges, and thrown into jail irrespective of the customs or laws of the land and without indictment, jury trial or even defense. This was one of the conditions that resulted in the Magna Carta.

Four centuries later, James II was faced with actual rebellion on the battlefield. Now, of course, treason is a very odius offense. In that case the treason had actually reached the stage of open war.

James then proceeded to punish such treason. His tool was an ambitious young lawyer named Jeffreys, who was ordered to hold assizes [court sessions] and to punish the traitors. His term of court became known as the notorious Bloody Assizes, and no one even knows how many people were seized in the night, tried, drawn, and quartered or otherwise tortured to death.

The English people decided that judicial tyranny was as bad as monarchial tyranny and threw Jeffreys into the Tower [of London] and James off his throne. The requirement that one be punished only by law and convicted of serious crime only by jury was again emphatically restated in the English Bill of Rights and, until recently, has not been doubted in any English or American court.

Fundamentally, due process of law in criminal actions has always meant at least two basic things: (1) There must be a law enacted by the proper legislature defining the crime, and (2) the right of trial by jury has always meant that no judge had control over the facts of the case, which were the sole province of the jury.

The recent segregation cases have been civil suits. As such, they were brought against various public-school authorities to prohibit them from denying certain plaintiffs the right to enter schools, on the ground that statutes which discriminated on the basis of race were contrary to the 14th amendment.

The Supreme Court has held that such statutes do contravene the 14th amendment, and the defendants in the cases, the public officials in question, have been ordered to cease enforcing the State laws held to be invalid. So far, one might find some argument of historical and constitutional basis for the action. A school board, ordered not to take any action contrary to the judgment of the Court, would be in contempt of court if it disobeyed. This would, perhaps, be merely the carrying out of the decree of the Court against the parties over whom it has jurisdiction in the suit before it.

But now something new has been added which opens wide the doors for any action that any particular judge may wish to take—and without regard to any law. In Tennessee, it seems, a single judge has issued a general injunction addressed to anyone in the whole world, telling all and sundry that they cannot do anything contrary to his decree against the school board.

Where does this ultimately lead us? By what right under law can one man, sitting on a Federal bench, extend the parties to a lawsuit to include the entire populace, and then single out anyone for arrest and conviction? If a person criticizes any judgment of a court and advocates its reversal or repeal, is the judge a one-man government who can do what he pleases with the rights of such a citizen?

If a single judge has this power, do we have a government of laws or merely a government of men, with each man sitting on any bench making up crimes as he pleases or meting out such punishment as his whim dictates? Finally, if a judge can, without benefit of statute, impose jail sentence, can he also sentence a citizen to be hanged?

When one looks at the whole Constitution, based upon all the centuries of human experience, one is startled to find how many provisions of that Constitution are being ignored and torn to shreds by judges who have apparently confused themselves with the gods. Let us consider a few:

"MANY PROVISIONS OF CONSTITUTION ARE BEING IGNORED"

The 14th amendment contains some clear and plain words which have not been mentioned by any court or newspaper in the recent segregation cases. In

fact, it will come as quite a surprise to most persons to learn that the 14th amendment contains a fifth section.

This last section states: "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

Nothing is said about the judiciary enforcing the amendment; no authority is given to the Executive to enforce the amendment. The sole power to enforce the 14th amendment is vested in the representatives of the people, the Congress, which is required to act "by appropriate legislation."

Now, Congress has passed no legislation to enforce the 14th amendment in respect to schools. Thus, it would seem clear to anyone who can read that there is no constitutional legislation providing for its enforcement and that neither a judge nor the President possesses the power to enforce it, without congressional legislation.

Secondly, no United States court has inherent jurisdiction under the Constitution, but may act only under laws of Congress granting such jurisdiction.

Article III is express and clear. The jurisdiction of the district courts is completely subject to congressional action and such courts may even be abolished by Congress at any time Congress desires. The Supreme Court has original jurisdiction only in cases affecting ambassadors and in suits where a State is the plaintiff; but in all other cases its jurisdiction rests solely on a grant of appellate jurisdiction "with such exceptions, and under such regulations as the Congress shall make."

Thus, while it reasonably can be argued under a long line of decisions that the Court may hold an act of a State to be unconstitutional, there is no jurisdiction at all, created by Congress, which gives the Court any power to go beyond that holding.

Thirdly, the decisions of the Supreme Court and all other courts have been unanimous, since the civil-rights cases decided shortly after the Civil War, in holding that the 14th amendment applies only to the States and does not apply to any private individual.

Fourthly, the third article of the Constitution states plainly that "The trial of all crimes, except in cases of impeachment, shall be by jury."

This is fortified by the fifth and sixth amendments which provide, respectively: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury," and "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."

Finally, neither the President nor the United States courts have any independent jurisdiction over the maintenance of law and order in a State.

Section 4 of article IV of the original Constitution provides that the United States may move against "domestic violence" only on "application of the legislature, or of the Executive (when the legislature cannot be convened)."

In the absence of such application from the legislature of the State, the United States Government completely lacks authority to enforce State police laws.

Are all of these constitutional provisions to be discarded by a 1-man government sitting as a district judge—or a 9-man government sitting as a Supreme Court—none of whom has been elected or is removable by the ballot of the people?

WHERE ACTION "WITHOUT LAW" MAY LEAD

To any one-man government who now seizes a large number of citizens of one of the States and threatens personally to put them in jail, one might well ask: ask:

1. Where is the statute, constitutionally passed by Congress, which defines the crime of which they stand accused?
2. Where is the statute, constitutionally passed by Congress, which gives any court jurisdiction over anyone and everyone who he thinks might disagree with his decrees?
3. Where is the presentment or indictment by a grand jury accusing these men of violating what law?
4. What are the limits of this power? If a judge, without law, can sentence 1 man to 30 days in jail, can he also hang him?
5. By what authority of law does he enforce the 14th amendment against private parties who are not parties to the suit before his court?
6. If the courts can create such jurisdiction and powers for themselves, what other powers may they assume?

Over the door of the Supreme Court is engraved in stone for the ages the true concept of our constitutional system: "Equal justice under law."
What is the meaning of the last two words? Are they obliterated by judges who act without law and are, therefore, lawless?

Senator ERVIN. That is all.

Senator JAVITS. Mr. Chairman, may I just state in conclusion in response to Judge Ervin, and I shall not make a speech about it, I deeply believe the Attorney General of the United States would be invoking time-honored provisions fully protecting the rights of individuals by law, and at the same time meeting a situation caused by a breakdown of the legal procedures which we now have available in the law, very seriously detrimental to the establishment of the Constitution and the orderly structure of government in the United States.

Thank you, Mr. Chairman.

Senator ERVIN. Before you leave I would just like to say that I am unwilling to repose in any one official the power which the administration bill would give the Attorney General. In saying this, I am not making any reflection on any occupant of that office. I would not want to trust anybody with such absolute power. I would not even trust myself with it.

Senator JAVITS. Senator, I think we trust the attorneys general of our States and our governors and many of our officials with very great powers, and that is why we have the right to oust them periodically.

Senator HENNINGS. Has the Senator concluded his presentation?

Senator JAVITS. Thank you very much.

Senator HENNINGS. Senator Ervin, have you concluded your examination?

Senator ERVIN. Yes.

Senator HENNINGS. Thank you very much for coming this morning and giving us the benefit of your testimony, Senator Javits.

Our next witness I believe is Mrs. Paul Blanshard.

Will you come forward, please, Mrs. Blanshard?

I understand that you are the Washington representative of the Unitarian Fellowship for Social Justice, and that you are appearing here this morning at your own request to testify upon this subject?

You may proceed in any manner that you wish, Mrs. Blanshard, either reading from your prepared text if you have one, and I gather that this is a copy of it, or you may intersperse or you may proceed extemporaneously.

STATEMENT OF MRS. PAUL BLANSHARD, WASHINGTON REPRESENTATIVE FOR THE UNITARIAN FELLOWSHIP FOR SOCIAL JUSTICE

Mrs. BLANSHARD. You are certainly giving me great latitude Thank you very much, Senator.

My name is Mrs. Paul Blanshard, and I am the Washington representative of the Unitarian Fellowship for Social Justice. I appear today for the fellowship and its legislative committee which includes Mrs. Paul Douglas, Mrs. Richard Neuberger, Ted Silvey, Ross Weston, David Williams, and myself.

Our organization is a legislative and social action unit of the American Unitarian denomination. It is nationwide and includes chapters in the North and South.

I am proud to say that all Unitarian churches stand squarely for racial justice and civil rights. It has been our historic position long before the Supreme Court ruling on desegregation. We feel, therefore, that we have a moral right as Unitarians to appear before you to urge the enactment of civil-rights legislation, and to do it now.

I first wish to present a resolution on "brotherhood" adopted at the last annual meeting of the American Unitarian Association in May 1956.

It is as follows:

Whereas Unitarians have an historic and frequently recorded obligation to uphold human brotherhood and freedom for all men;

Whereas the decisions of the United States Supreme Court dealing with compulsory segregation of the races have removed the legal sanction of second-class citizenship in our land, and provided a mandate for all citizens to work for the elimination of segregation and the securing of their basic constitutional rights to all our citizens;

Whereas men of good will of all opinions and persuasions are earnestly working to this end throughout our Nation on local and regional levels; and

Whereas we recognize the difficulties of implementing a wise and just course of action which goes against the deepseated emotions of a significant number of people: Therefore be it

Resolved, 1. That we as the delegates to the 131st annual meeting of the American Unitarian Association favor every attempt to meet and search for areas of agreement and mutual understanding among men of all races and persuasions and will ourselves foster and join with all such attempts;

2. That we respectfully urge the President of th United States, the governors of th separate States, and all persons in civil authority to call and persistently support, within their respective jurisdictions, conference of good citizens of all races in order that a groundwork of healthy communication may be established and just solutions to these problems may be found;

3. That we urge upon all governmental officials and agencies their duty to accord the full protection of the law to all citizens in th exercise of their rights, including the right to vote, and the other rights guaranteed by the Constitution of the United States; and

4. Finally, that we call upon the Congress of the United States to enact such legislation as may be necessary to accord this protection wherever it is not provided by the local community.

Our Unitarian Fellowship works cooperatively with other national organizations which look expectantly to this 85th Congress to enact civil-rights legislation. We joined in the statement presented by Mr. Roy Wilkins to your committe. We support the President's program as a minimum, but our point of view goes beyond this and we support Senate bill 510 which would ensure equal rights to all of our citizens. This bill covers not only the President's proposals but in addition it embraces provisions against the poll tax, lynching and for equality of opportunity in employment.

These civil-rights measures are not only long overdue in our democracy but they are imperative if we are to move forward as a strong united nation and if we are to hold an international position of leadership with other democratic nations. I have lived in all parts of the United States and am keenly aware of the various types of discrimination that we have.

I have also lived in Jamaica in the British West Indies, in Rome and London and I have come to know how our reputation as a freedom-loving Nation is jeopardized when people in other countries read of racial discrimination and injustice here.

An American away from home finds it extremely difficult to square our discriminations with our Constitution.

We of the Unitarian Fellowship for Social Justice put high hopes in the 85th Congress. We believe the climate of public opinion has changed; that there is a greater awareness of the need for civil-rights legislation, and that the enactment and enforcement of such legislation will not divide but unite our Nation and strengthen our moral leadership throughout the world.

We look to this Committee of the Judiciary and to the Senate to enact quickly the best possible civil-rights legislation. We regard it as a most hopeful sign that you have voted to bring these hearings to a close on March 5.

If the 85th Congress passes these civil-rights bills it will go down in history as the back to the Bill of Rights Congress.

Senator HENNINGS. Does that conclude your statement, Mrs. Blanshard?

Mrs. BLANSHARD. That concludes my statement, Senator.

Senator HENNINGS. Thank you very much for your kindness in coming here this morning to give us the benefit of your reading of the resolution, and of your further statement in connection with this subject.

Mrs. BLANSHARD. I might just interject, Senator Hennings, when I said I was so pleased that you have decided to bring the hearings to a close, that we feel you have been extremely generous to all sides in this hearing that you have held, and that there are probably no things that have not been said that should be said.

Senator HENNINGS. I think it is part of our function, Mrs. Blanshard, and I believe the other members of the committee agree; we want to have full, free hearing from all points of view and from all who want to be heard.

Mrs. BLANSHARD. We feel you have done that.

Senator ERVIN. Every few weeks some lady comes to see me and says she represents the Women's World Party or the Women's National Party.

Mrs. BLANSHARD. Yes. I am not that one.

Senator ERVIN. No. And she tells me that there are a great many discriminations throughout the United States in favor of men against the women, and asks me to join in the sponsorship of the so-called equal rights amendment. I would just like to ask you whether you have made any particular study of that particular field.

Senator HENNINGS. I might make the observation to my good friend from North Carolina that hope must spring eternal if the lady comes every 2 or 3 weeks asking you this.

Senator ERVIN. I always hold out some hope for a lady that comes to see me. I would just like to know whether you have made any study of that particular field, and whether you have any opinion as to whether there would be any justification for the Commission to be set up by S. 83 to study the question whether there is discrimination against women in State laws that should be corrected.

Don't you think the civil rights of women should be investigated?

Mrs. BLANSHARD. Senator Ervin, I think we have our civil rights. I have never been a member of the Women's National Party. I have been a trade-union organizer and I have been an active worker for social legislation, and I think that I have in a sense been on the

other side of the picture from the Women's National Party. I think that in the United States there are a few discriminations against women professionally, but they are self-created. They are not ones that need to be remedied by law, and that the legislation that we have on our books in various States that could be termed "social legislation" is for the protection of women and not against the freedom of action of women.

Senator ERVIN. That is all.

Senator HENNINGS. Thank you very much, Mrs. Blanshard. It has been a pleasure to have you with us this morning.

I understand, Mr. Slayman, there are no further witnesses who desire to be heard this morning.

Mr. SLAYMAN. That is correct, Mr. Chairman.

Senator HENNINGS. The chairman would like to be indulged in making the following statement, to announce that nearly every day next week, from Monday, February 25, 1957, through March 2, 1957, is available for witnesses to appear before the Constitutional Rights Subcommittee in current hearings on civil-rights legislation.

I would like to especially point out that if there are such opponents of these bills, of the so-called pending civil rights, we would like very much to hear from them.

We do not want anybody to later say they have not been given an opportunity to appear and express their views; and again to call to the attention of all, that under the vote of the subcommittee held last Monday morning, that the hearings are scheduled to terminate on Tuesday, March 5.

With that, if there is nothing further, the committee will rise and stand in recess subject to the call of the Chair.

Are there any other witnesses who desire to be heard this week, Mr. Slayman?

Mr. SLAYMAN. If so, they have not expressed themselves. Some of those who were originally scheduled to be heard this week have asked that they be heard next week.

Mr. CLARENCE MITCHELL. Mr. Chairman, we have some witnesses who were here last week seeking an opportunity to be heard. I have received long-distance calls from them indicating that on 24-hour notice they can come at the committee's pleasure. They are ready to be heard at any time the subcommittee is willing to hear them.

Mr. SLAYMAN. I would suggest, Mr. Chairman, that next Wednesday may be convenient.

Senator HENNINGS. I am chairman of the Rules Committee, and that is our regular day to meet, but I presume we can get somebody else to act as chairman. I am also a member of the Democratic Policy Committee and we meet on Mondays.

Judiciary meets on Monday morning. The chairmen of the committees met yesterday. Today we meet with the leadership of the minority party at 12:30 for, I presume, a rather protracted meeting on a number of subjects, so we do have many problems, but I am sure, out of a seven-man committee, that we can get somebody to sit.

Senator Ervin has indeed been very faithful, and I have been as faithful as my other commitments and my obligations would allow me to be.

Senator ERVIN. Mr. Chairman, I do not think the public——

Senator HENNINGS. As I said before, I am on 16 committees and subcommittees, chairman of 1 full committee, and chairman of 3 subcommittees of judiciary alone, so we do have some other business to attend to in the Senate.

Senator ERVIN. I just started to observe I don't think the public generally knows the situation we are in. For example, I have five committees or subcommittees sitting today.

Senator HENNINGS. The Senator is carrying a very heavy burden. I am on the Antimonopoly Committee, among others, which has been meeting constantly. I have not been able to go to any of those meetings. So those things go on, and I am sure that at least those who are here and many others understand that problem. However, I would say then, Mr. Mitchell—you have suggested next Wednesday, Mr. Slayman?

Mr. SLAYMAN. That was subject to your schedule and approval, of course.

Mr. MITCHELL. We can come any time, Mr. Chairman.

Senator HENNINGS. The Rules Committee meets as a regular thing on Wednesdays, Mr. Mitchell.

Mr. SLAYMAN. What about Thursday?

Senator HENNINGS. My wife asks me every morning whether I am going to be home for dinner, and I say I don't know, so I don't know where I will be Thursday. I hope I will be here. I will do my best.

Mr. SLAYMAN. Tentatively Thursday, then.

Senator HENNINGS. Let us say Thursday and I assume we can get somebody to sit, depending on other things that may arise. We live in pretty fast-moving times.

Mr. MITCHELL. I might say with deep respect, Mr. Chairman, that we are not only anxious to present our testimony, but also we are very anxious not to infringe on the patience or the time of the subcommittee.

Senator HENNINGS. You are not doing that in any way. Your witnesses were here and they were here late—close to 5 o'clock Saturday evening. They were very reasonable and I thought very understanding in view of the fact that the committee had been sitting for some several days and it seemed to be inflicting cruel and unusual punishment not only on some of the witnesses but on the committee to ask them to sit late Saturday night in view of all that had transpired during the week.

However, we can make arrangements on Thursday, I am sure.

Mr. SLAYMAN. Tentatively then, Mr. Chairman, we will set that for Thursday, February 28.

Mr. MITCHELL. I have suggested to them also, Mr. Chairman, that they come prepared to stay until such time as the subcommittee could hear them at its pleasure. They are willing to do that.

Senator HENNINGS. I am sure, Mr. Mitchell, that barring any impediment that I cannot foresee this will be agreeable. I did not know about the meeting at the White House yesterday until, I think it was, the day before.

We were there from 8:30 until about noon.

Mr. MITCHELL. The one thing we do not want to do is wear out people like you.

Senator HENNINGS. We will have somebody somehow or other to hear your witnesses, and I shall certainly do my best to be one of them.

Mr. MITCHELL. Thank you.

Senator HENNINGS. Thank you.

We are recessed subject to the call of the Chair.

(Whereupon, at 11:10 a. m., the subcommittee was recessed, subject to call of the Chair.)

CIVIL RIGHTS—1957

TUESDAY, FEBRUARY 26, 1957

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

The subcommittee met, pursuant to recess, at 3 p. m., in room 155, Senate Office Building, Senator Sam Ervin presiding.

Present: Senators Ervin (presiding) and Hruska.

Also present: Charles H. Slayman, Jr., chief counsel, Constitutional Rights Subcommittee.

Senator ERVIN. The committee is glad to have Mr. Davis Grant, assistant attorney general of Texas, to testify before us today.

If you are ready, we will proceed to hear your statement, Mr. Grant.

STATEMENT OF DAVIS GRANT, ASSISTANT ATTORNEY GENERAL OF TEXAS

Mr. GRANT. Thank you, Senator.

Mr. Chairman, I am Davis Grant, of Austin, Tex. I appear here at the request of and in behalf of Hon. Price Daniel, Governor of the State of Texas, and Hon. Will Wilson, attorney general of the State of Texas.

These two gentlemen have requested that I convey to this committee their sincere appreciation for this opportunity to give you their thoughts on certain so-called civil-rights bills now before this committee. I personally appreciate your kindness in allowing me to appear.

My appearance here was motivated by a sincere concern of the Governor and the attorney general over these bills, which in their opinions are basically bad legislation, and more especially, if enacted as law would exercise a corrosive effect upon the sovereignty of the States of the United States.

Governor Price Daniel recently said in a speech to the Texas Legislature:

> Our Nation is at the crossroads. On one hand there is the wide open, easy but dangerous highway of further centralization of power that has led to the loss of freedom and self-government in every nation which has traveled that way. On the other hand there is the safer but more difficult road charted by the fathers of our own country and paved with the principle that freedom is preserved best by keeping as much of the government as possible close to the people.

Attorney General Will Wilson said, in taking his oath of office:

> Where the boundary between National and State sovereignty is put in issue, as it frequently is in many types of cases, we shall consistently support State sovereignty.

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As the Supreme Court of the United States said in 1876:

> We have in our political system a Government of the United States and a government of each of the several States. Each of these governments is distinct from the others, and each has citizens of its own who owe it allegiance, and whose rights within its jurisdiction, it must protect. The same person may be at the same time a citizen of the United States and a citizen of a State, but his rights of citizenship under one of these governments will be different from those he has under the other. * * * The Government of the United States is one of the delegated powers alone. Its authority is defined and limited by the Constitution. All powers not granted to it by that instrument are reserved to the States or to the people.
>
> No rights can be acquired under the Constitution or laws of the United States, except such as the Government of the United States has the authority to grant or secure. All that cannot be so granted or secured are left under the protection of the States (*United States* v. *Cruikshank*, 92 U. S. 542, 23 L. Ed. 588).

And so it is the duty of us all, both private citizens and public officials, to see to it that this philosophy of government, established as fundamental law by our Founding Fathers, is defended—for it is the defense of freemen.

Getting down to specific objections to these bills, S. 83, S. 581, S. 510 would establish a Commision on Civil Rights. Such a commission is totally unnecessary and funds spent by it would be a shameful waste of public moneys.

Senator Herbert H. Lehman, an ardent champion of most civil-rights legislation, had this to say about a similar proposal in a statement before the Committee on the Judiciary, United States Senate, 84th Congress, 2d session (pp. 344–345):

> There are three bills pending before you reflecting the same proposal to create a Federal Commission to study, conduct investigations, and report on the status of civil rights in our Nation today. I myself do not give this proposal a top priority at this late stage of the congressional session. Civil rights have been extensively studied in previous years by many congressional committees, including this one, by many private groups, and by the President's Committee on Civil Rights in 1947. All of this study material is available.

Aside from the fact that such a Commission would be a wasteful duplication, there is absolutely no necessity for the Congress to provide for the creation of such a body, since the President already has that power. Again quoting from Senator Lehman's statement:

> I must point out that if the administration is sincerely interested in creating a commission—and it has established much less important study commissions by Executive order—the President could easily proceed to appoint a commission tomorrow.

Further, the power of subpena given the Commission is too broad. It gives rise to the possibility of requiring the presence of any citizen in the country to appear at hearings perhaps hundreds of miles distant, without mention of reimbursement for expenses thus incurred, in order to answer any charges whatever, no matter how ridiculous.

It would also empower the Commission to subpena books, papers, and documents of not only private individuals but of the States, without their consent, thus infringing upon their freedom of action.

There is no limit to the time the Commission might hold such records. Thus, the Commission could indefinitely impound in Washington the entire records of the State of Texas, if the Commission "deems it advisable."

Such arbitrary powers remind one of a grievance the American colonists had against the King of England.

> He has erected a multitude of New Offices, and sent hither swarms of Officers to harass our people, and eat out their substance—

and again—

> For transporting us beyond seas to be tried for pretended offenses (Declaration of Independence).

S. 510 would establish not only a Commission on Civil Rights (title I, sec. 101) but would create a Joint Congressional Committee on Civil Rights (title III, sec. 301). It is contradictory for one bill to recite the need for study, evaluation, and recommendation as to remedial legislation, while contemporaneously therewith accompanying bills are submitted which go about as far as conceivably possible in enacting the legislation about which it is said further study is needed.

S. 83 provides for an additional Assistant Attorney General and for the institution of civil actions by the Attorney General "for the United States or in the name of the United States but for the benefit of the real party in interest, for redress, or preventive relief," in cases of alleged violation of a person's civil rights. This is a totally new concept of the functions of our Federal Government and specifically the Justice Department. It would make a legal-aid clinic of that Department, and if enacted, the Attorney General will certainly need more like 100 new assistants than 1 to take care of all who would seek free legal assistance.

One amazing feature of this section of the bill is the fact that apparently it authorizes the Attorney General to file a lawsuit in behalf of an individual without that individual's consent or even knowledge.

Senator ERVIN. If you will pardon an interruption there, I will call attention to the fact that the Attorney General himself in his testimony stated that that was the construction he put on the bill, and that in his opinion the bill, if enacted into law, would allow him to bring suits in behalf of the parties even without their consent and even against their will.

Mr. GRANT. That brings it squarely in conflict with the laws of our State. I will continue and make a further comment if you will permit.

If such a thing should occur in Texas it could be a violation of our penal statutes against barratry.

I might add parenthetically here that the constitution of our State of Texas provides that the legislature shall define the penal offense of barratry and affix punishment thereto, one of the few penal offenses required by our Constitution, and if this bill becomes law and if such a thing should occur in Texas, if a case is filed in Federal district court in Texas without the knowledge of the injured party or without his consent, it would bring it squarely within our penal statutes in my opinion.

It would also be in violation of the Canons of Ethics of the American and Texas Bar Associations.

And which I might say govern all attorneys whether they be public officials or private practitioners.

It might be said that this measure is preventive rather than punitive and that an injunction restraining an illegal act would be the only relief sought. The use of the term "redress" would open the door for civil actions for damages.

Black defines "redress" as "to receive satisfaction for injury sustained." Thus if this bill becomes law you would very probably have the Attorney General of the United States seeking money damages for a private individual for real or imaginary wrongs and the Federal Government would foot the bill, even the court costs.

This provision of S. 83 is an affront to the American bar, largely composed of private practitioners. If any person has a legitimate claim for money damages, or any other claim for that matter, that person can certainly receive justice through the representation of a private attorney.

Another rather unique feature of the measure providing for civil actions for money damages is that such actions can be filed in a Federal district court without first exhausting State remedies and also without regard to the amount of damages claimed.

In other words, you could have the ridiculous situation of the Attorney General of the United States filing a suit for damages in the amount of $1 in a United States district court.

Senator, I might add here that in my opinion it would cheapen the great office of the Attorney General of the United States to have him appear in a $1 lawsuit, and it is certainly possible within the framework of this proposed legislation.

Last June Attorney General Brownell called a conference in his offices on the congested condition of courts. I was fortunate enough to attend, representing the National Association of Attorneys General. There were discussed possible solutions to the crowded conditions of our Federal courts, and, incidentally, learned that our State courts are less crowded than our Federal courts. If S. 83 becomes law, our Federal courts will be jammed with suits, many without any real basis in fact.

As to these bills which enlarge upon existing law defining certain acts as violation of the criminal law, I would make this comment. In this connection I would like to call your attention to the statement Attorney General Herbert Brownell delivered to the Committee on the Judiciary, United States Senate, on Wednesday, May 16, 1955. (See p. 77 of the report of the hearings.)

With reference to a similar measure then before Congress, General Brownell said:

> There must certainly be grave doubt as to whether it is wise to propose at the present time any further extension of the criminal law into the extraordinarily sensitive and delicate area of civil rights.

At another point in his statement Mr. Brownell speaks almost apologetically in reference to existing Federal law.

Although the following quotation from the Attorney General's statement is rather lengthy, I think it is most significant and should prove of great value to this committee in considering this bill——

Mr. SLAYMAN. Excuse me, Mr. Chairman.

I would like to ask the Assistant Attorney General, since he is going to read a long statement here. to go back for a moment to one point on barratry provisions under Texas State law.

Mr. Grant, do you have a specific constitutional provision on that point or is it covered by your penal statutes?

Mr. GRANT. Under both.

Mr. SLAYMAN. In the constitution?

Mr. GRANT. Yes, sir. The constitution provides that the legislature shall define the penal offense of barratry and affix a punishment thereto.

Mr. SLAYMAN. There has been a recent statute enacted in the Commonwealth of Virginia. I wondered if you were familiar with this statute on the subject of barratry?

Mr. GRANT. No; I am not.

Mr. SLAYMAN. Would this be a serious legal point to be taken up when the bill is being debated?

Senator ERVIN. It is a very interesting thing to me, as a lawyer, that it is in the constitution. In my State we still have the common law of barratry.

Mr. GRANT. It is a very interesting subject and one in which I am pretty much involved at the present time. We are having a lawsuit down there now with that very point pending, in which we seek to oust a foreign corporation from doing business because we allege in our petition that they were committing barratry in Texas.

Mr. SLAYMAN. Thank you, sir.

Mr. GRANT. I quote from Mr. Brownell's statement to the Senate Judiciary Committee:

> Another illustration: The United States Supreme Court recently reversed the conviction of a Negro sentenced to death by a State court because of a showing that Negroes had been systematically excluded from the panels of the grand and petit juries that has indicted and tried him. In so doing, the Supreme Court stated that according to the undisputed evidence in the record before it systematic discrimination against Negroes in the selection of jury panels had persisted for many years past in the county where the case had been tried.
>
> In its opinion, the Court mentioned parenthetically, but we thought pointedly, that such discrimination was a denial of equal protection of the laws, and it would follow that it was a violation of the Federal civil-rights laws.
>
> Accordingly, the Department of Justice had no alternative except to institute an investigation to determine whether in the selection of jury panels in the county in question the civil-rights laws of the United States were being violated, as suggested by the record before the Supreme Court. I think it must be clear to you that the mere institution of this inquiry aroused a storm of indignation in the county and State in question. This is understandable, since, if such violations were continuing the only course open to the Government under the laws as they stood now, was criminal prosecution of those responsible. That might well have meant the indictment in the Federal court of the local court attachés and others responsible under the circumstances.
>
> Fortunately, the Department was never faced with that disagreeable duty. The investigation shows that, whatever the practice may have been during the earlier years with which the Supreme Court's record was concerned, in recent years there had been no discrimination against Negroes in the selection of juries in that county.
>
> Supposing, however, that on investigation, the facts had proved otherwise. The necessarily resulting prosecution would have stirred up such dissension and ill will in the community that it might well have done more harm than good. Such unfortunate collisions in the criminal courts between Federal and State officials can be avoided if the Congress would authorize the Attorney General to apply to the civil courts for preventive relief in civil-rights cases.
>
> In such a proceeding the facts can be determined, the rights of the parties adjudicated and future violations of the law prevented by proper order of the court without having to subject State officials to the indignity, hazards, and personal expense of a criminal prosecution in the Federal courts.

It seems to me, Mr. Chairman, that is my interpretation, and it is the interpretation of the Governor and the attorney general upon these remarks of General Brownell.

I don't know, the testimony or statement was made before the House Subcommittee on the Judiciary yesterday that these particular bills were sponsored by the administration.

I don't know whether that is true or not.

At any rate, if it is true, Mr. Brownell apparently previously testified before the Senate subcommittee that he did not wish that the criminal law be expanded.

I judge from his remarks here that he quoted that as the case but he advocated a different approach, that is civil action.

Mr. Brownell's suggested remedy, that of a civil action involving the use of injunctions, would probably cause just as much friction as he admits that criminal actions cause.

Criminal proceedings are against individuals but civil actions involving injunctive relief may be against officials acting in an official capacity for the State or any of its political subdivisions.

Thus you could have the State pitted against the Federal Government. This would most certainly result in a sharper conflict than an action against a private individual ever would.

I would like to point out that under the provisions of S. 510 murder is made a Federal crime. This could be the opening wedge to deprive the States of all jurisdiction in criminal cases.

I am sure the Senator is familiar with that particular section of that bill which says that if death should occur by reason of a person being deprived of civil rights, then it is punishable by I believe up to 20 years in the penitentiary and a $10,000 fine, or something like that.

In view of the case of *Pennsylvania* v. *Nelson*, this is not idle speculation. In that case the Supreme Court held that the Federal Government had preempted the sedition law of the State of Pennsylvania.

Senator ERVIN. And I might add of all of the other 48 States and all of the Territories of the United States.

Mr. GRANT. I am sure that is correct. The principle would apply equally to all.

Senator ERVIN. They did not hold it because that was not before them but that is what they declared.

Mr. GRANT. I presume if another case came up from Texas involving the same issues, they would rule the same way.

Mr. Chairman, many other comments could be made concerning these two measures—I have not discussed all the measures that are before this committee, but it is not my desire to burden this committee with a lengthy dissertation.

Again, I appreciate your courtesy in allowing me to appear, as representative of the Governor and Attorney General of the State of Texas.

Senator ERVIN. I would like to ask you just a few questions.

What time of the year ordinarily are your registration books open for the registration of new voters?

Mr. GRANT. Senator, we do not have a system of registration in Texas. We do have the poll tax. I believe that you can commence paying your poll tax, I know you ordinarily start paying your regular taxes around the first of November, but the peak period of payment of poll tax and when it is emphasized is the first of January, and you can't pay it later than midnight of January 31 of each year.

Senator ERVIN. In other words, in Texas then, under your system of law you will have determined by the last of January who will be eligible to vote in the elections that year?

Mr. GRANT. Not altogether, but largely we could. We have certain exemptions in Texas where you do not even have to get an exemption certificate. That is the old folks, the old folks, the old people over 65 years of age. They do not have to pay a poll tax. They can pay for one if they want to. They can get an exemption if they desire an exemption, but unless they live in cities of 10,000 they don't even have to do that, so there are a great many elderly people who are eligible to vote and who do vote without any sort of poll tax or exemption, but of course the mass of the voters is determined by the end of the 31st of July or as soon thereafter as the clerks can make up the list as to who are eligible to vote.

Senator ERVIN. The reason I was asking that, in my State we have a system in which we require registration.

Mr. GRANT. Yes, sir.

Senator ERVIN. And the books are open for the primaries during the few weeks before the primary and in the fall they are open for about 5 or 6 weeks before the general election. I was just thinking about that in connection with the point which you made so well, that these equitable proceedings would stir up as much tension as criminal prosecution.

In my State the equitable proceedings would stir up more because they would be brought at a time when political tensions are heightened by the approaching election or primary, whereas criminal prosecutions would be tried some months after the primary and election and would be tried in a calm, judicial atmosphere where political considerations and tensions are absent.

Therefore on that basis as well as the point you make, I agree with you in the observation that the so-called equitable proceedings for that reason in most States, and also because they are in a sense a contest between the Federal Government on the one hand, and the State on the other, would stir up more, far more dissension and dissatisfaction than criminal prosecutions.

Mr. GRANT. Not only that, it would probably influence the outcome of elections if some person of ill will, seeking to defeat one candidate and favoring another, would make certain allegations which would call for investigation.

Certainly the Justice Department would have no knowledge as to the merits of the complaint. They would have to make certain investigations to determine that, and any such investigation would possibly influence the outcome of a local election.

Senator, I would like to make this statement: We have no fears of anyone complaining of being deprived of their right to vote in Texas.

I heard certain statements made yesterday before the subcommittee of the House that certain people had been deprived of their right to vote. Why, in Texas, we encourage every person, regardless of his race or religion or any other thing so far as that is concerned, to pay the poll taxes.

One reason for that is that most of that tax goes to our school children. During the month of January of each year the junior chamber of commerce puts on a concerted drive to sell as many poll taxes as they possibly can. They ask, and usually get, the cooperation of all of our

tax collectors, who appoint deputy tax collectors who go into the banks and to the convenient places, and there they sell poll taxes to every person.

I might say that there is absolutely no restrictions that I know of as to who those deputy poll-tax collectors are. In my hometown I was president of the junior chamber of commerce and I know what I am talking about; we had many Negro deputy poll-tax collectors who went out and sold poll taxes among their people, and we encouraged it.

We wanted them to qualify, and I think that is largely true in the entire State of Texas.

I have not heard—I am 42 years old and I never honestly heard of a person complain of being deprived of their right to vote in Texas.

Senator ERVIN. I will ask you this question as a lawyer.

It is a fundamental principle of equity that equity will never entertain jurisdiction of a cause where the party has an adequate remedy at law; is that not so?

Mr. GRANT. That is right.

Senator ERVIN. I call your attention to a portion of part 3 of S. 83 appearing on page 15, where it is proposed to add a new section 5, reading as follows:

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

Then I also invite your attention in the same connection to part 4 and to the portion of part 4 appearing on page 17 where the same provision is set forth. I will ask you if the provision of the statute, that the aggrieved party shall not be required to have exhausted other remedies, does not depart entirely from the very fundamental principle of equity that equity shall not interfere in matters where there is an adequate remedy at law?

Mr. GRANT. It is certainly a radical departure from the established procedure in our system.

We have never, a court of equity has never entertained a cause of action where adequate remedy was provided by law.

Senator ERVIN. I will ask you further if you do not think that it would impair most substantially the system of government which we have in this country in which we have the Federal Government on the one hand with certain powers and the State government on the other with certain powers to enact a statute like this which would confer upon the Attorney General of the United States the power at his election to render State administrative procedures inoperative?

Mr. GRANT. It certainly would, sir. I don't care who the Attorney General might be. He just cannot have a working knowledge of local conditions here in Washington. He can't be in all of the 48 States at the same time, and I don't think he could have enough assistants to cover the whole country and the Territories and really administer such a system with any amount of justice.

Senator ERVIN. And as an illustration of the wisdom of preserving the administrative remedies of States, the Attorney General in testifying before this subcommittee called attention to alleged derelictions on the part of three election officials in North Carolina.

Since that was called to my attention, I have contacted my State board of elections, and have been advised by the State board of elec-

tions that each of those instances occurred in May 1956, that they were called to the attention of the State board of elections by the field representative of the NAACP in North Carolina; that on the same day they were called to the attention of the State board of elections, the State board of elections called the charges to the attention of the chairman of the county board of elections in each of those three counties, and that the chairman of county board of elections in each of those counties immediately instituted an investigation; and that, so far as could be determined, each one of those matters was cleared up by State administrative procedures within a period of just a few days, a period during which the Attorney General could not have drawn bills in equity relating to the alleged derelictions.

I will ask you, Mr. Grant, if you don't consider that the enactment of the bill authorizing the Attorney General to resort to injunctive process in cases of this kind would enable a politically minded Attorney General to practically intimidate the election officials in the various States of our country.

Mr. GRANT. I think that is a reasonable interpretation of the effect of this bill, of these measures.

Senator ERVIN. The Attorney General testified himself that he would not go into action until the complaint was filed, and then he would try to work the matter out with the State officials. If that process were followed, it would be equivalent to the Attorney General of the United States telling the State election officials "If you do not do as I say, I am going to have the law on you," and by that process the Federal Government would practically supersede the right of the States to handle matters pertaining to the registration of voters and the determination of their eligibility to vote and similar matters, would it not?

Mr. GRANT. In my opinion it would.

Senator ERVIN. A Federal contempt statute provides that in cases of criminal contempt, a person has the right to trial by jury, a criminal contempt being defined to be where the act enjoined also constitutes a crime under either Federal law or the law of the State in which the alleged contempt occurs, except in certain classes of cases such as those where the contempt is committed by officers of the court or committed in the immediate presence of the court or in cases where the action is brought in the name of the United States.

Under that statute I will ask you as a lawyer if you agree with my conclusion that these new actions which are to be brought by the Attorney General, in the name of the United States, would not result in depriving persons concerned, State officials, of the right to trial by jury even in cases where they were charged with criminal contempt.

Mr. GRANT. Yes, sir. Essentially a contempt proceeding is a criminal proceeding except you don't have the right to trial by jury in civil contempt proceedings, but if the court puts you in jail, you are just as far behind the bars as if a jury puts you there.

Senator ERVIN. Yes. As a matter of fact under the injunctive process, a person, for example a newspaper editor, who may thereafter comment in editorials on the impropriety of the issuance of the injunction runs the risk of being haled into court himself and charged with contempt, even though he was not a party to the action and even though he has no opportunity to contest the propriety of the issuance of the injunction in the first place, is that not a fact?

Mr. GRANT. I think you can reasonably say that that would be an effect.

Senator ERVIN. I believe that is all.

Do you have any questions, Mr. Slayman?

Mr. SLAYMAN. I have only a couple of technical questions about the poll tax, Mr. Chairman.

Mr. Grant, what is the amount of the poll tax in Texas?

Mr. GRANT. It varies. In my county it is $1.75. I think it is not less than $1.50 and not more than $2. I am not positive about that but I know it is not over $2 and in most cases it is $1.75 depending on the county itself.

Mr. SLAYMAN. And for how far back does that have to be paid? What is the period of time covered?

Mr. GRANT. It is actually paid for the previous year, 1 year.

Mr. SLAYMAN. One of the complaints about a poll tax statute has always been that—where it is cumulative—it requires the payment of a sizable sum of money.

Mr. GRANT. No, sir; it is not cumulative in Texas.

Mr. SLAYMAN. Is it not in Texas?

Mr. GRANT. No, sir. You know, it is strange to me to hear so much talk about the poll tax. I never hear any complaints about the poll tax in Texas from anyone.

Mr. SLAYMAN. Have there been any complaints to your knowledge, as the Assistant Attorney General of the State, of denial of the right to vote by people who have paid their poll tax?

Mr. GRANT. No, sir. To be perfectly fair with you, I will say that we have had a few letters from people who had moved from one jurisdiction to another shortly before an election.

Sometimes they have a little difficulty in establishing their residence, in other words satisfying the election judges that they have met the residency requirements.

Of course you have to be a resident of the State a year and in the county 6 months before you are eligible to vote. I don't think we have any requirement, local requirement, that is, residents of the precincts in which you vote, voting precinct.

I heard one witness tell the committee yesterday that they had a requirement of 30 days in the particular political subdivision in which they vote. We have no such requirement in Texas.

To be perfectly frank with you, I don't even know the race of the people who complained. It was of no interest to me. We have over a million votes in Texas and we have received less than a half-dozen complaints and they were of that nature. There was not any accusation at all of any individual being deprived of the right to vote on account of their race, religion, or anything of that kind.

Senator ERVIN. I am not personally concerned about the poll-tax requirement because my State abolished the poll tax as a prerequisite to voting a great many years ago, but frankly I have never been able to see any use in shedding any tears over a failure to grant voting rights to a person who is not willing to contribute a couple of dollars to the cost of the Goverment which protects his life and his property and educates his children.

Mr. GRANT. We don't have any complaint that I know of. Of course I am an officer now there at the State capital, but before I left my home county I was a public official over there.

I don't recall a single person ever complaining, and I made several races and I solicited everybody's vote that I could get, and I did not hear one of them complain about having to pay that $1.75 to vote. They all know where it goes, and that is to the schoolchildren.

Senator ERVIN. I realize there has been a lot of complaints by a lot of people and a lot of propaganda on it. I had the privilege of being in the House here in 1946 and I had a daughter 11 years old going to one of the schools and I used to help her across Connecticut Avenue because of the terrible traffic.

One day she came out of the school crying and saying: "Daddy, my teacher told us that southern people sure treat poor people bad. She said we don't let them vote because they have not got $1 to pay the poll tax with."

I have a statement to put in the record from Mr. Edward Scheidt—the North Carolina commissioner of motor vehicles.

(The statement is as follows:)

TESTIMONY IN OPPOSITION TO SO-CALLED CIVIL-RIGHTS BILLS, 85TH CONGRESS, 1ST SESSION, BY EDWARD SCHEIDT, NORTH CAROLINA COMMISSIONER OF MOTOR VEHICLES, RALEIGH, N. C.

I speak to you as a law-enforcement officer with more than 25 years' experience and I say that this is a bad bill. It is worse than that. It is a Pandora's box which threatens to shake the very foundations of law enforcement in the United States.

The effect of this bill would be to create a national police force to supersede and sit in judgment upon the actions of local and State law-enforcement officers in almost any kind of case they might handle, regardless of the fact that it may be of a purely local nature and should not be of any interest or concern whatever to the Federal Government.

The tremendous strides which have been made in law enforcement in the United States have been based upon the fact that enforcement stems from the local level, where local matters are concerned, and branches out to the State and National levels where the nature of the offense makes State or National enforcement necessary. This has led to a splendid spirit of cooperation among the local, State, and Federal law-enforcement agencies in our country. In my judgment this bill would destroy this cooperative spirit. Instead of each type of law-enforcement agency operating in its own sphere, any arrest made by a local officer for a local offense could conceivably be subject to scrutiny by the Federal Government. Every officer making such arrests might well ask himself whether it would not end in his being investigated and tried by the Federal Government for an alleged violation of the civil rights of the person he took into custody. No matter how meticulous he might be in the enforcement of local or State laws, he would run the risk of being accused by persons arrested by him of having deprived them of some right under the Constitution. In fact, this bill would be an encouragement for any malefactor to divert attention from his own offense by calling upon the Federal Government to proceed against the local officer who had the temerity to arrest him. This is a bill to harass officers in the performance of their duty and impair their efficiency and morale by making them spend an inordinate part of their efforts in defense of their own actions in the protection of life and property.

The logical result of this type of legislation would be to undermine the pride of the officer in his work and the prestige of his organization. In the last analysis, he would not be judged by how well he enforced the laws of his community and State but by the interpretation placed upon his actions by someone in the Federal Government in Washington, D. C., for that is where the decisions would be made whether a local officer arresting a local citizen for a local crime would be tried in a distant Federal court.

The conscientious local officer doing his best and complying fully with the rules and regulations of his Department, local ordinances and State laws, would be placed under a sword of Damocles, knowing that his every act might be microspocally examined by the Federal Government at the instigation of criminals, psychopaths, pressure groups, or any one who wanted to make trouble for him,

no matter how correct the officer might have been in his actions. If the Federal Government is to pass judgment on any arrests which a local officer may make and substitute its judgment for that of the officers, prosecutors, and judges of a community and State, would it not be better to abolish State and local enforcement and let the Federal Government take over the entire job of policing the United States. The people of the United States would never stand for that and yet it would be more logical than this bill which places the control of local police work but not the responsibility for it in the hands of the Federal Government. If the Federal Government is to control all law enforcement, then it should have the responsibility for doing the job, too.

This proposed legislation in my judgment is an encroachment of the Federal Government upon the powers of State and local governments. This is a law to deaden the initiative of local law-enforcement officers. If the Federal Government is to peer over the shoulder of every local law-enforcement officer and drastically punish him if he does not conform to the concepts of a Federal official far from the scene, will not the officer hesitate to take needed action for fear that he himself would be made to suffer? The easier and safer way would be for him to attempt to avoid making arrests and thereby prevent such repercussions.

Not only does this legislation place the Federal police authorities in a supervisory capacity over local enforcement, but it also makes a direct invasion of local jurisdiction and undermines the existing authority of local enforcement to deal with local problems by placing such matters within the primary investigative jurisdiction of the Federal Government. It is an open invitation to any complainant to circumvent the local governmental facilities by dealing directly with the Federal authorities regarding violations of local and State laws without any showing that the State laws are inadequate or not properly enforced. This would create a situation as confusing as it is unnecessary since the question of whether a case would be tried in Federal or State court would depend not so much upon the facts as upon the agency to which the violation was reported. This feature of the law could easily result in persons being placed in double jeopardy; nowhere does the act contain any provision to exempt persons from prosecution in Federal court if they have been tried in State court for substantially the same offense.

This is a law to incite litigation and under its provisions persons are encouraged to bring suit for damages in Federal court without regard to the sum in controversy, notwithstanding the fact that if they had been injured or wronged, a cause of action would exist under State laws.

Let us examine some of the specific provisions of the bill: It would create a Civil Rights Commission, which among other functions, would appraise the activities of State and local governments with a view to determining what activities adversely affect civil rights. Has not the Federal Government enough to do in appraising its own activities? What are the qualifications of the persons who will do the appraising? None is stated. Is it not the height of presumption for such a body to pass judgment upon State and local governments? What is the basis for the assumption that a Civil Rights Commission would be competent to do this? What is the basis for the assumption that such a body would have greater knowledge, ability, or integrity than local and State public officials? Is not this Commission by its very nature susceptible to becoming a creature and tool of pressure groups? It is noted that the bill provides that the Commission shall to the fullest extent possible utilize the resources of private research agencies in the performance of its functions. Finally, would not this Commission assume the status of a super law-enforcement agency?

By its provision that the personnel of the FBI 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, the bill reveals the fact that it anticipates a substantial increase in civil-rights investigations by the Federal Government. It is noted that no limitation whatsoever is placed upon the amount of increase in personnel and certainly if the Federal Government assumed jurisdiction of every case which this statute would permit it to do, the size of the FBI could be doubled and it would still not have enough men to handle all the investigations.

The bill provides that if any person threatens another in the free exercise of his rights under the Constitution or laws of the United States he may be fined $1,000 and imprisoned for 1 year. It is not necessary that the aggrieved person be injured or intimidated. Constitutional rights are so broad and cover such a multitude of possible situations that it is conceivable that the partici-

pant in an argument or disagreement with no notion whatsoever that he was trespassing on someone's constitutional rights would be amenable to Federal prosecution under this law. This provision is moreover an open invitation to anyone so disposed to use the Federal Government for the ulterior purposes of annoying or embarrassing anyone against whom he has a grievance.

The wording in the bill listing numerous rights, privileges, and immunities which are not to be deprived under color of law or custom is so broad and all-inclusive as to open the door to challenge the operation of laws and regulations which only by the wildest stretch of the imagination would have any bearing on civil rights. All that is necessary to subject an arrest, conviction, decision, or ruling to Federal investigation would be a contention by the effected person that in administering a valid law or regulation the authorities proceeding against him for some other reason (such as color, race, religion, or national origin) than the enforcement of the law or regulation. The fact that the allegation of discrimination was groundless would not prevent it from being made nor would it prevent a Federal investigation.

The bill would guarantee the right to be immune from punishment for crime except after a fair trial. This right is already guaranteed under existing State and Federal laws, and is inherent in any trial and where infringed would be a basis for appeal to higher courts. This provision would result in duplicating the reviews already being made by higher courts and in effect try the same case twice. The question might well be asked in the context of this far-reaching bill as to what is meant by a fair trial. It is a well-known fact that many persons, no matter how overwhelming the evidence against them, will maintain that they did not receive a fair trial if convicted of a criminal offense and will pursue to the *n*th degree efforts to have the verdict set aside. Penitentiaries are populated by individuals who think they ought not to be there. As has been said: "No man e'er felt the halter draw, with good opinion of the law."

The evil in the fair-trial provision as well as the provisions regarding other specific rights, privileges, and immunities, is that it is an invitaton to try the identical issues in a different tribunal an dto duplicate jurdiediction over matters already fully protected under existing law and which by all logic and reason ought to be passed upon in connection with the trial of the substantive offense against the person who contends that his constitutional rights have been infringed.

There may be persons in the northern, eastern, or western parts of our country who feel that they need not be concerned over this bill under the complacent assumption that it is directed against the South. If such there be, their callousness and complacency is exceeded only by their naivete. This bill will bring the heavy hand of a national police force upon every community and State in the Nation. Its application is not limited to situations affecting race, color, religion, or a national origin. It is a frontal attack upon the police powers and responsibilities of all local and State governments.

PROFESSIONAL QUALIFICATIONS OF EDWARD SCHEIDT

A. B. 1926, L. L. B. 1931, both University of North Carolina; admitted to North Carolina bar 1931; served with FBI 1931–53; during time with FBI was special agent in charge of its Charlotte, N. C., office 9 years, New York office 6 years, and Detroit office 6 months; retired from FBI after more than 21 years' service; North Carolina Commissioner of Motor Vehicles 1953 to present date; as commissioner of motor vehicles in charge of North Carolina State Highway Patrol; member of International Association of Chiefs of Police for 16 years; member of traffic committee of the International Association of Chiefs of Police and vice chairman for Eastern United States of the State and Provincial Section of the International Association of Chiefs of Police; also serving as chairman of the committee on enforcement and safety of the American Association of Motor Vehicle Administrators.

Senator ERVIN. If there is no other witness who desires to testify, the committee will stand in recess until 10 o'clock tomorrow morning.

(Whereupon, at 3:45 p. m., the subcommittee was recessed, to reconvene at 10 a. m., Wednesday, February 27, 1957.)

CIVIL RIGHTS—1957

WEDNESDAY, FEBRUARY 27, 1957

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

The subcommittee met, pursuant to recess, at 10:05 p. m., in room 155, Senate Office Building, Senator Sam Ervin presiding.

Present: Senators Ervin (presiding), and Watkins.

Also present: Charles H. Slayman, Jr., chief counsel, Constitutional Rights Subcommittee; and Robert Young, staff member, Judiciary Committee.

Senator ERVIN. We will proceed.

STATEMENT OF GEORGE B. PATTON, ATTORNEY GENERAL OF THE STATE OF NORTH CAROLINA

Senator ERVIN. Judge Patton, we are glad to have you here to present your views with respect to this matter.

I would like to let the record show that Judge Patton is the Attorney General of North Carolina, that he has had a distinguished career as a trial lawyer and as a member of our State superior court and as attorney general of the State.

Proceed, Judge.

Mr. PATTON. Mr. Chairman and members of the committee, I wish to express my appreciation for the opportunity given me to appear before your committee to express my views, as attorney general of North Carolina, on the proposed civil rights legislation.

Before dealing with the specific provisions in these bills, I should like to describe, by way of background explanation, what I think is the attitude and feeling of the people of North Carolina—what has been their reaction—in meeting one of the greatest problems that has ever confronted our State. I refer to the revolutionary change in the Federal law accomplished by the United States Supreme Court in 1954, affecting segregation of races in public education and, as the more recent decisions reveal, also affecting the relationship of the races in other activities such as recreation and transportation.

Some background explanation of the attitudes, feelings, and reaction of the people of my State is pertinent to my comments on the specific provisions of the proposed legislation. Knowledge of the attitude and feelings of the people in my State, undoubtedly representative of the attitudes in all the Southern States, should enable you to judge more wisely when you come to the point of decision on these pending bills.

On May 17, 1954, the United States Supreme Court announced its opinion in the Brown case, declaring:

> We cannot turn the clock back to 1868 when the amendment was adopted, or to 1896 when *Plessy* v. *Ferguson* was written * * * in the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal.

The Court cited "modern authority" on sociology and psychology in support of its decision. It did not and could not rely on any legal precedent nor on the intent of the framers of the 14th amendment as revealed by historical evidence.

How do the people of North Carolina and of the other States most directly affected by this decision see it? What is their perspective?

This is how we see it.

On May 16, 1954, and for more than 55 years prior to that date, it had been the stated, accepted, express rule of constitutional law, as interpreted by the United States Supreme Court itself, that "separate but equal" facilities met the requirements of the 14th amendment. On one day under the law of the land, separate but equal facilities in public education were constitutional. On the next day, the law of the land had undergone a revolutionary and fundamental change. Separate but equal facilities no longer met the requirement of the 14th amendment.

How did this fundamental and revolutionary change in our constitutional law come about?

Did this change in constitutional law come about after debate in Congress, after passage of a proposed amendment by two-thirds of both Houses, and after approval of a constitutional amendment by three-fourths of the States? Did this revolutionary change in the basic law come about after that process of discussion and debate whereby the citizens themselves weighed the arguments on one side and then the other and then made up their minds by casting their votes, either directly or through their representatives in the several legislatures?

The answer, of course, is "No." This revolutionary change in constitutional law did not come about through the amendment procedures set forth in the Federal Constitution. It came about by a decision of nine men, at that time comprising our highest appellate court. The school segregation opinion did not say that previous interpretations of the United States Supreme Court were wrong as a matter of law. The school segregation opinion did not say that the Court which decided the Plessy case in 1896, and the Gong Lum case in 1927—and at least six other decisions based on the separate but equal rule—had erred in interpretation of the Constitution.

Senator WATKINS. Mr. Attorney General, they wouldn't have to say that after having reversed it, would they?

Mr. PATTON. No, they wouldn't have to.

Senator WATKINS. In other words, when they reversed it, they said it in the strongest kind of language.

Mr. PATTON. Yes. But they did not cite a legal precedent but rather the trend of the times.

With respect to legal precedent and established construction of the Constitution, all that the judges in the 1954 court could say was, "We cannot turn the clock back." And, most unfortunately, the 1954 decision cited as its "modern authority" certain experts on psychology

and sociology who had previously been declared by the House of Representatives Un-American Activities Committee and by the Department of Justice to be subversive. And our Federal Constitution had been characterized by at least one of these experts as a conspiracy against the freedom of Americans. Our judges of the Supreme Court took an oath to uphold the Federal Constitution, which I construe to means an oath to uphold its imperfect features, if any, as well as its perfect ones. As I say, it is most unfortunate that our 1954 Court saw fit to cite as "modern authority" some of the authors whose names appear in the footnotes to the Brown opinion.

Now, I am describing an attitude and a reaction to this judge-made change in our fundamental law which I think is illustrative of the views of the people of my State, and illustrative of the views of many, many citizens of this Nation.

Speaking as a lawyer, I think that the United States Supreme Court erred in making this fundamental change in the interpretation of our Constitution. The historical evidence bearing on the intent of the framers of the 14th amendment and the intent of the Congress which proposed it and the legislatures which ratified it does not, in my opinion, support the decision of our Court in the Brown case.

I think that our Court in its holding in the Brown case did not take into account that there is a greater principle under law than achievement of what that Court or even the majority of the citizens of the 48 States may deem a laudable result in a given case. That greater principle is a recognition of and adherence to the law as it is written, as it was intended, and as it has, in fact, until the very recent past, been applied. How can we expect and urge the average citizen, unschooled in the refinements of constitutional law, to respect and adhere firmly to the ideal of rule by law, when he has a suspicion, with some basis for that suspicion, that our highest Court may have taken a little judicial shortcut, in the interest of what, undoubtedly, a majority of the citizens of this Nation conceive to be the national welfare?

I wish that it were possible for this committee to get the reactions of lawyers from all over our country. I means the well-considered thoughtful, and honest expressions of lawyers from every section of our Nation. I know there are differences of opinion. But ask the lawyer who has no particular ideological ax to grind for one side or the other, and I believe you will find a grave concern over the far-reaching legal implications of the action of our Court in the Brown case, even though that lawyer did not personally approve or endorse State segregation laws.

If the highest Court in our land can decree a fundamental and revolutionary change, amounting to a reversal or amendment in the construction of our Constitution, on the basis of sociology and psychology as that Court finds it, the lawyer is compelled to recognize that there is indeed no definable limitation on the power which that Court could exercise in the future on the basis of such a precedent.

I am describing the attitude and thinking of thoughtful, responsible citizens.

This is how we see it.

I have spoken of the reaction of the lawyer. How about the reaction of the people in the Southern States most directly affected by the decision of our court in the school cases? The man at the filling station,

on the farm, in the barber shop, in the store, in the textile plant, in the factory?

The average citizen does not have an expert knowledge of the development and the interpretation of our Constitution. He is aware that there are certain prescribed procedures for amending the Federal Constitution. I believe I am correct in my estimate of the reaction of the nonlawyer citizen in the Southern States that he simply cannot understand how the United States Supreme Court can possess such authority as it exercised in the Brown decisions. He has been told all his life that there are certain procedures for amending our Federal Constitution. This sort of decision appears to him to fly right in the face of everything which he has been taught.

This is how we see it.

Gentlemen of the committee, I have said all of this, not to get sidetracked on a debate as to whether our court made a grievous error in constitutional interpretation, but I have said these things for the purpose of emphasizing what is a fact in North Carolina today. The attitude and the feelings of the mass of our people are facts of life. Those people not living in the Southern States and who have, for all practical purposes, no particular problem by reason of the Brown decision are probably not much concerned. For the mass of these people the Brown decision simply doesn't exist. And if they are reminded of it and their attention is brought to the matter of segregation or not, I should suppose that the average person not living in the South would probably shrug his shoulders and say, "What's the matter with those people down there?" Others, perhaps because of particular personal experiences that they may have had, may have different reactions.

The important point that I wish to get across to this committee is that the people in North Carolina—and I am talking about the vast majority of our citizens—did not and do not like the results contemplated by the decision of our supreme court and, just as important, did not and do not like the method by which this change in our law was brought about. I am not here to argue whether that feeling or that attitude is right or wrong, is justified or not. I am here simply to state it as an existing fact. I state it because it has a most profound influence on the developments in our State. And this attitude will have a most profound influence on what the people in others States do. This fact cannot be ignored.

Now, I want to touch briefly on another aspect of the attitude of, I hope, a vast majority of the people in our State and the sentiments as expressed by Governor Hodges and other leaders in North Carolina during the past 2 years.

We say, frankly, bluntly, without equivocation, that we think the United States Supreme Court made a tragic mistake in trying to bring about a revolution by changing a long-established interpretation of our Constitution; that its legal basis and foundation for making such a change was insubstantial, at best, and, at worst, nonexistent.

However this may be, our Governor and our legislature and our people have, nevertheless, recognized that the United States Supreme Court has expressed its opinion on this subject. We recognize that that Court has the final word in the interpretation of our Federal Constitution, and that its interpretation, under our system of government, will stand until either the Court reverses itself or until there is

an express amendment to the Constitution proposed by the Congress and ratified by the States.

We do not take the position that we can defy the decision of that Court simply because we disagree with the decision. Defiance of the law of the land, though it is bad law in our opinion, is legally wrong, and it is morally wrong.

Now will you please permit me to describe briefly what North Carolina has done since the Brown decisions in 1954 and 1955.

The leaders in our States have counseled calm and careful consideration of the problems which we knew were going to arise by reason of this fundamental change in our law. Our leaders have spoken out on more than one occasion and have plainly said that defiance of the Supreme Court, even when we disagree strongly with that Court's action, cannot be justified. Our people are a law-abiding people.

At the 1955 session of our general assembly, our statutes pertaining to the public schools were recodified and all reference or requirement that facilities be furnished on the basis of race was deleted from our statutes. Prior to 1955, it was well settled that our local school officials had the supervision of assignment of pupils to the various public schools. At the 1955 session, recognizing the tremendous problems of pupil assignment which were likely to arise by reason of the segregation decisions, our legislature clarified the authority of the local school board. The local school boards were directed by statute to make assignment of pupils so as to provide for the orderly and efficient administration of the public schools and for the effective instruction, health, safety, and general welfare of the pupils. This statute established reasonable standards of practice for the local school boards to follow. Similar provisions are found in great number in statutes pertaining to administrative agencies of the Federal Government as well as other State governments throughout the Nation.

The relations between the races in North Carolina gradually worsened during the 2 years following May 1954. It became clearly evident that the white people in North Carolina were simply not going to mix the races in our public schools without the probability and likelihood that some schools would have to be closed, and the very great possibility that some people would be hurt in the process. Aside from this possibility, there was also the fact that our people simply did not want to find themselves in a situation in which they had no effective choice.

(It should be kept in mind that the operation of public schools by our various States is a matter entirely up to the people in the States themselves. There is no Federal law that I know about and no possible construction of the Federal Constitution, unless the precedent of sociology be stretched even further than it has been already, which says that a particular State must operate public schools. Can you conceive of a Federal law, statutory or otherwise, directing the various State legislatures to appropriate a certain amount of money for public schools within the State?)

It was recognized in North Carolina that we could not have public schools without public support.

In July of 1956 our Governor called a special session of our legislature to consider a proposed amendment to our constitution and implementing legislation. This proposed amendment would permit the peo-

ple in any given locality, by majority vote, to discontinue the operation of the public schools in that community.

Other legislation proposed that tuition grants be made available to the parents of schoolchildren for whom a public school was not available or as to whom the parents objected to sending their child to a public school in which there was some mixing of the races. The law specifically provides that such a tuition grant would be available only for attendance at a private school.

We, of course, recognize that in any given situation it is going to be a legal question as to whether or not the school attended by the tuition-grant recipient is in fact a private school. That is a matter of degree and would depend upon all of the circumstances. We have certainly endeavored not to mislead our people on this score. We have said to our people that it is not possible simply to change the name of a public school and expect that school thereafter to be accepted by the courts as a private school. But private education is a possibility available to the parents in our State.

By way of summary, our situation in North Carolina comes down to this. First, the local school boards in our State have full and complete authority for the assignment of pupils to the public schools. There is nothing in our law at all which requires a school board to separate or segregate the races in our public schools. Any school board, if it chose to do so and if it determined that the sentiment in the community would permit such a situation, could make whatever arrangement it desired on assignment of pupils to the public schools.

Second, we have recognized that under the Federal law, as it is now expressed by the United States Supreme Court, we cannot expect to maintain public schools without there being insistence on the part of some Negro citizens to send their children to what may have been a formerly all-white school. We also recognize the possibility that some white parents may want to send their children to a school which has heretofore had only colored pupils.

Our laws then provide a degree of choice on two levels. A choice is available to the individual parent. Suppose there is some mixing of the races in a given public school in a community and suppose the majority of the parents whose children attend that school accept the situation and are willing to live with it. On the other hand, suppose that there are a few parents who simply do not want their children to attend that school under any circumstances. It is readily apparent that such a condition poses a most serious problem.

Thus, for the choice to the individual parent, our law says that if you do not wish to send your child to that school, you have the option of taking your child out of school and applying for an education expense grant, equivalent to the per-student cost of educating your child in the public school, and if you find a private school in which you can enroll your child, you will get that grant. That is the choice to the individual parent.

Senator WATKINS. So you will have under that law both private and public schools?

Mr. PATTON. It would be possible; yes.

Senator WATKINS. It would be up to the individual boards of education to determine that?

Mr. PATTON. Yes, sir. You would not do away with that particular public school. We would only anticipate that in isolated in-

stances that they would send them to a private school. But under such circumstances they could do that, whether they were Negro citizens or white.

There is another area of choice which we have provided by our laws. That is the choice to the community. Suppose we have a situation in which some mixing of the races comes about in one of our public schools and the people in that community are simply incensed about it. They do not want to live with that situation. They would prefer to have no public school in that community rather than to have a public school in which the races are mixed. Our law provides that the people in that community shall have the choice and shall have the opportunity of voting on the question as to whether they will suspend the operation of the public school in that community.

Senator WATKINS. Does your constitution provide for public schools?

Mr. PATTON. Yes; it does.

Senator WATKINS. Has it been amended?

Mr. PATTON. Not to eliminate the provisions of having a public school of some kind; no.

If a majority of those voting in the election on the question say that they wish to continue operation of the school, then it will continue. If the majority say that the school should be closed, then that is what will be done.

Let me interpose there, if you don't mind. What I am speaking about there would be one school. That doesn't say that you couldn't send those children to another school if you desired to, within the discretion of a particular board. The real purpose behind that is to prevent—looking away out into the future—the chaos in a particular administrative unit or a particular county that would about—we don't want to affect the whole State school system.

By the way, I made a flub with you a moment ago. By our constitutional amendment submitted to the people last September, we did write this provision into the constitution as to allowing a particular school board in a particular unit.

Senator WATKINS. That was passed by the people?

Mr. PATTON. By the people.

Senator WATKINS. What was the vote?

Mr. PATTON. 82.25 percent for. And I am coming to that in a moment.

The provisions in our law for holding the election are designed to insure a convenient, full, and free expression of sentiment on the part of our people; and it is further provided that the people can have full land free opportunity to express themselves on this question any number of times. They can decide one thing one day, and granting enough time to call another election, 30 to 45 days, they can have an election and decide the opposite. And here is something that is important.

Of course, we know and you know that closing our public schools is a last-ditch proceeding or resort which we hope will never have to occur. Those of you who have no real personal knowledge of the situation in the Southern States, which are most directly affected by this change in our fundamental law, cannot really have any comprehension of the feeling and attitude of the people. To you, it may seem unbelievable that any intelligent people would close their public

schools rather than to have the white children go to school with the colored children. To me, it is quite believable and quite likely.

The amendment to our State constitution, authorizing the choice of action which I have just described, was overwhelmingly adopted by North Carolina voters on September 8, 1956. In that election, we had the largest vote in the history of our State other than at a regular presidential-year election. A total of 573,424 votes were cast. Of this number, 471,657, or 82.25 percent, voted for the constitutional amendment. The amendment carried in every single one of our 100 counties. In 29 counties, the vote for the amendment was over 90 percent of the total cast; in 53 of the 100 counties, over 80 percent; in 13 of the counties, over 70 percent; and in the remaining 5 counties, over 60 percent. The amendment was supported by both political parties in our State. I think that one of the best comments on this decisive vote was made by Mr. Thomas J. Pearsall, a distinguished citizen and leader in our State who is chairman of the North Carolina Advisory Committee on Education, a committee studying the problems arising out of the segregation question. His statement on the election is as follows:

> The large and decisive vote on the school constitutional amendment on September 8 indicates two things to me. First, that the people of North Carolina have strong feelings on the segregation question. Second, that the people of North Carolina approve of and are ready to follow the reasonable and moderate course advocated by Gov. Luther H. Hodges.
>
> I do not interpret the vote on the constitutional amendment to mean that the people of North Carolina have said that they will close their schools before they will permit mixing the races in any of them. Nor do I interpret the vote to mean that the people of North Carolina have said they will not close their schools to avoid mixing of the races. What the people did say was that they wanted the opportunity and privilege of determining in their own localities whether or not they would close their schools rather than permit situations intolerable to them, and the opportunity to choose, under the conditions provided in the law, private rather than public education for their children.
>
> The vote on September 8 should unite all of our citizens behind a positive and affirmative program for support of public schools. Those who question the attitude and the feelings of the people of North Carolina on the segregation question should now be convinced how the people feel on the subject and should realize that to have public schools we must have public support. The Governor of our State is dedicated to the preservation and strengthening of our public-school system. I believe all North Carolinians will be ready now to support him in his determination to give public education to all children.

Mr. SLAYMAN. Judge Patton, do you have any way of ascertaining in North Carolina how many white voters there are and how many Negro voters?

Mr. PATTON. No; I would not. That would be a rather difficult thing.

Mr. SLAYMAN. Would there be counties, such as there are in other States, where the registration is pretty clear?

Mr. PATTON. Ours would not be. You could not tell from that.

Mr. SLAYMAN. So you couldn't tell, for example, with this figure 82.25 percent, you couldn't tell——

Mr. PATTON. No; you couldn't tell how that would be.

Mr. SLAYMAN. That isn't ascertainable?

Mr. PATTON. I don't think so. I think it would be a rather difficult proposition to do.

Mr. SLAYMAN. Thank you.

Mr. PATTON. I don't know whether any community in North Carolina, when actually put to the test, would vote to close the public

schools. I think much would depend upon the extent of the situation and all of the circumstances surrounding it. At this point we simply do not know what the various communities would do when the specific situation was presented to them. We would simply hope that they would act in the best interest of their children and in the best interest of education, whatever that action may be.

I do know this. If the people in a community would vote to suspend the operation of their public school you have a situation where, for all practical purposes, it would be impossible to operate that public school.

I hope that this description of what North Carolina has attempted to do in meeting the problems arising from the school segregation decisions will be of some help in clarifying to this committee our reaction to these proposals in the bills now under consideration.

Let me add one other thought as a bit of background comment before speaking specifically on the proposed bills. Keep in mind that the original decision in the Brown case, on May 17, 1954, did not decide the manner in which the principle of law there enunciated should be applied. The Court requested further argument on the manner of relief. In the second decision, on May 31, 1955, the Court said—

> full implementation of these constitutional principles may require solution of varied local school problems. School authorities have the primary responsibility for elucidating, assessing, and solving these problems; courts will have to consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles. Because of their proximity to local conditions and the possible need for further hearings, the courts which originally heard these cases can best perform this judicial appraisal.

This second decision went on to declare that the courts may consider problems relating to administration, arising from the physical condition of the school plant, the school transportation system, personnel, revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools on a nonracial basis, and revision of local laws and regulations which may be necessary in solving the foregoing problems.

I think it is accurate to say that the United States Supreme Court adopted what I shall term "local" approach in meeting the problems brought about by the change of our fundamental law. The Court in 1955 rejected the plea of the NAACP and others to adopt a rigid and inflexible method of enforcement. The Court rejected the plea of the NAACP and others to fix a specific date, in the immediate future or in the more distant future, by which everyone would have to fall in line and do whatever the Negro plaintiffs wanted done.

I am informed that a total of 16 separate bills dealing with so-called civil-rights legislation are now pending before your committee.

Senate bill 83 and the subcommittee print are quite similar and seem to represent a consolidation of most of the features in the other bills, excepting Senate bill 510. Senate bill 510 is designated as an Omnibus Human Rights Act. The word "omnibus" has several definitions, and one of the definitions listed in the dictionary is this:

> A heavy public vehicle, usually four-wheeled, designed to carry a comparatively large number of passengers.

After reading the provisions of the so-called omnibus bill and having in mind this definition of omnibus, I readily perceive that Senate bill 510 is appropriately described as an omnibus act. It is indeed

a "heavy vehicle," with more than four wheels, and it is undoubtedly designed to attract and to carry a "comparatively large number of passengers." (I am aware that an omnibus legislative bill is one containing a collection, often a loose collection, of many miscellaneous provisions.)

I shall not dwell upon the features of Senate bill 510, as it seems to differ from the other two major bills only in having the so-called fair-employment provisions. I think little indeed of this sort of legislation and I don't think that it is being seriously considered in the Congress. I hope it is not.

I understand that Senate bill 83 is the measure which has the backing of the administration, and therefore my specific comments are directed primarily toward the provisions in that bill.

The provisions of Senate bill 83 can be divided into three major categories: (1) provision for the establishment of a commission on civil rights; (2) provision for an additional Assistant Attorney General, for the purpose of enabling more centralized action and control from Washington on civil rights matters; and (3) amendments of present civil-rights statutes.

THE PROPOSED COMMISSION ON CIVIL RIGHTS

Look at the specific provisions of this bill and see what is suggested for this Commission on Civil Rights. One might truly say that there is nothing bad about having a commission to study the problem of civil rights. Even though one may disagree very strongly as to whether the Federal Government should inject itself any more into this difficult problem, to stir up and agitate this problem any more than is already being done by Federal law, I would raise no serious objection to a commission set up to give a balanced, fair and impartial study to the matter of civil rights. If nothing else, a balanced, fair and impartial study, speaking not for one particular pressure group or another, would be of considerable assistance in the national interest and should make some contribution to healing the division between sections of our Nation, a division which is looming larger as each day goes by.

But is the Commission proposed by this legislation to be a fair and impartial body to study the subject of civil rights? The answer is a plain, unequivocal "No."

Look at the extensive powers which would be given to this Commission: Subpenas may be issued by the Chairman of the Commission acting alone, or if there is any objection by a member of the Commission, the subpenas can be issued by decision of 4 members of the 6-man Commission. It is true that the Commission is directed, as one of its duties, to—

> study and collect information concerning economic, social, and legal developments constituting denial of equal protection of the laws under the Constitution—

and it is true that it is directed to—

> appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution.

But look at the first paragraph of section 104 (a) of this bill. The Commission is directed—a mandatory duty is imposed upon it—to—

> investigate allegations in writing that certain citizens of the United States are being deprived of their right to vote or that certain persons in the United States

are voting illegally or are being subjected to unwarranted economic pressure by reason of their sex, color, race, religion, or national origin.

Gentlemen of the committee, I say to you that a fair appraisal of this section of the bill is that it would create the equivalent of a super-duper grand jury, centered in Washington and directed to get involved in each and every case throughout the whole country in which somebody writes to the Commission saying that they are being deprived of the right to vote or that they are being subjected to unwarranted economic pressure.

Senator ERVIN. If I may interrupt you at that point, without disrupting your trend of thought, do you have any idea as to what limitations or definitions would be placed on the words "unwarranted economic discrimination"?

Mr. PATTON. That is a broad field, Mr. Chairman, as broad as I have ever seen. The world is the scope of that.

Senator ERVIN. Wouldn't it be further than that, even to the horizons of the universe?

Mr. PATTON. Yes; I think it would, sir.

Mind you, now, the Commission is directed to investigate every allegation in writing which it receives.

I ask the committee, where is the evidence that begins to justify this sort of approach in law enforcement? What instances have been cited to this committee tending to show that the various Federal district attorneys throughout our Nation, and the Federal grand juries, are unable to cope with alleged violations of the law in their own locality. Don't forget, gentlemen of the committee, that we already have Federal statutes, criminal statutes, which prohibit interference with a person's right to vote. That is title 18 of the United States Code, section 594. And we already have a Federal statute, a criminal statute, which prohibits the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States. That is section 242, title 18 of the United States Code. Who in Washington has decided that the normal channels of law enforcement, and I refer to the Federal channels and not to State law enforcement, have so broken down and are so inadequate or incapable of carrying out the duties which are imposed by law that we now must have a centralized guiding and pressure-controlling hand set up in Washington? Do you have the evidence, gentlemen, that suggests we need this? If you do, I wish that you would make it public.

Now, may I direct your attention to that last portion of the sentence in paragraph 1 of this section dealing with duties of the Commission. The Commission is directed to investigate every allegation in writing that an individual is being subjected to "unwarranted economic pressure" by reason of his sex, color, race, religion, or national origin. Subjected to unwarranted economic pressure? Suppose an employer decides, gentlemen of the committee, that he has tried out a secretary of the female sex for the past 6 months, that previously he had used a male secretary, and that, while he found his present secretary to be efficient and competent, he decided that, because she was a woman, he would have to let her go. In other words, she is an efficient and competent secretary but, unfortunately, she is a woman, and therefore he must let her go. I suppose that that constitutes "economic pressure" by reason of that individual's sex. Now, it may be that there are several factors motivating that employer. One factor that

may be quite important might be the atttiude of the employer's wife. He may have a wife who has practically ordered him to discharge this attractive female secretary. I suppose we would have a situation where the husband, a male, is being subjected to pressure by his wife, on account of the husband's sex, and the husband, in order to turn off the pressure on himself, must in turn exert economic pressure on the secretary. And, to compound this tragic development, the wife is probably threatening to quit work if the husband doesn't fire his good-looking secretary. Thus, the wife is bringing economic pressure on her husband because of the wife's, husband's, and the secretary's sex, and the husband is forced to bring economic pressure on his secretary because of, presumably, the sex of the secretary, and undoubtedly that of himself and his wife. The Commission is ordered to investigate every allegation in writing charging unwarranted economic pressure because of sex.

You may say that the instance I have described obviously does not constitute "unwarranted" economic pressure. It seems unwarranted to me. Who is to determine what is or is not unwarranted? How is the Commission to know what are all of the factors involved before it is required to undertake this investigation?

Then take a look at the other factors set out, on which obstensibly unwarranted economic pressure could be based. The color, race, religion, or national origin of a person. Is this a small effort to get an FEPC in the backdoor or in the side window? Does this sort of provision apply only to individual employers in interstate commerce or for that matter to individuals whether they are employers or not who are affecting what I would term interstate or foreign commerce? On what basis is this sort of statutory provision constitutional? Is it not true that our courts have ruled time and time again that the Constitution, the 14th amendment, does not apply to action of individuals?

I say that if this proposed legislation means what the words say, that this is an insidious and completely unjustifiable effort to subject private citizens to harassing investigations by political appointees, who would undoubtedly step up their activities about the time of elections, delving into private matters. If the so-called economic pressure which somebody brings to bear on another is not forbidden by the established rules of law which govern and prohibit unfair competition, slander or libel, it seems to me that it is nothing but ridiculous to ask our Federal Government to probe the motives of individual citizens and determine whether they are acting with respect to somebody else because of the alleged victim's sex, color, race, religion, or national origin.

If this committee thinks that it would be in the national interest to establish a body to study the subject of civil rights, fairly and impartially, and report facts, not grind ideological axes, I think this committee can propose legislation which would accomplish that purpose and no other.

Senator ERVIN. Before you leave that point, it is always dangerous to give your recollection of another person's testimony when it is given orally because a person may not express exactly in the right phraseology the meaning he intended to convey, and on the other hand even if he does, the person who hears it may not understand it and place the same interpretation on the words. However, the Attorney General

of the United States appeared before this committee, and he was asked what those words "unwarranted economic pressure" meant. And he suggested that perhaps it meant illegal economic pressure. And then it was suggested to the Attorney General that perhaps the bill should be amended so as to specify illegal economic pressure. Then the Attorney General said he did not favor such an amendment, because it might afford some basis for somebody to challenge the width of the investigation the Commission could conduct.

As I construe this, they can investigate any kind of a business transaction, from the sale of a loaf of bread, up or down, that anybody is willing to write a complaint about into the Commission, that he was economically dissatisfied with the treatment he received because of his race or his color, or his or her sex or national origin. And that is a rather broad field because all of us belong to some race. And as you suggested, or I suggested, that is the thing that sets the matter loose as far as these words are concerned, without any compass or anything to guide the Commission. The investigation can be as broad as the universe itself and it doesn't even require the allegations to be sworn to. And citizens of the United States can be dragged about here and there by subpenas and harassed about every kind of a business transaction they ever had with anybody of the opposite sex or anybody of another race or anybody of another color or anybody who has any kind of a national origin, whatever those words "national origin" mean. And everybody has a national origin of some kind.

Mr. PATTON. Might I interpose right there, Mr. Chairman, that human nature being what it is, in every State in the United States you have a great group of what I might term complainers. They write and complain about anything and you would have bushels of complaints from every State in the Union. You would have to have I don't know how many employees—you would have to have an investigating capacity to go down and investigate all of them. And the odds are you would find when you took the shovel, in my country vernacular, and dug down to the bottom you would find about 90 percent of them had nothing to them to begin with. But you can harass those individuals nearly to the breaking point and find nothing.

Senator ERVIN. Proceed.

Mr. PATTON. Provision for an additional Assistant Attorney General:

Senate bill No. 83 provides, in section 111, that the Department of Justice shall have one additional Assistant Attorney General "who shall assist the Attorney General in the performance of his duties." No. 83 does not go into detail and spell out the requirement that the Department of Justice is to establish a civil-rights division as such as do the other bills now pending before this committee. However, I don't think this omission in Senate bill No. 83 is particularly relevant or material. It is plain, from the entire bill, No. 83, that this Assistant Attorney General is to be added for the purpose of centralizing more control and action in Washington. Indeed, the proposed amendments which are said to be for the purpose of "strentghening" the civil-rights statutes come right out and say that the Attorney General may institute suits for the benefit of private individuals who claim that their civil rights have been denied.

Now, gentlemen of the committee, I am not up here to argue to you that the Department of Justice simply shouldn't have another Assist-

ant Attorney General. I think that the Attorney General of the United States ought to have a sufficient number of assistants and sufficient personnel to perform the duties which the Congress, by statute, imposes upon his Department. I am the attorney general of the State of North Carolina. I know what it means to be given duties, to be given responsibilities, and simply because you don't have enough personnel be forced to spread things mighty thin. An attorney general in that situation cannot feel that he is really doing his job properly.

Senator ERVIN. I might say here that I am perfectly willing to give more assistance. We were assured the week before last on this committee that there were 28 bills which authorized the United States or governmental agencies to seek injunctive relief against alleged wrongs which also constitute crimes—with which statement I do not take issue. But we were also assured that there were a number of these cases where the statute would authorize the Attorney General or the Department of Justice or some other governmental agency to bring suits for the personal benefit of private individuals. And I was promised that those things would be pointed out to me about 10 days ago. And when I get my 12 or 14 hours a day done, I have been trying to read up on those statutes, and so forth—I haven't completed my reading—but so far I haven't found a one of them except the wage and hour law that authorizes any suit by the Government to assert personal claims of private individuals, and in that case the statute expressly provides that before the Government can bring a suit of a person under the wage and hour law it has to have the consent of the party for whose benefit the suit is to be brought.

Now, I am not in a position at this time to say about all the statutes. I haven't read all of them, but I can say that I haven't found any statutes other than the wage and hour law that permit the Government to bring suit on behalf of private individuals. And I have not been informed by the Justice Department of any. And I would vote for an appropriation to get them an employee to do the necessary research to either verify or refute the argument which the Justice Department has made that this bill is like other bills. I say right here and now that despite my working so many hours a day on this matter, I haven't found a single statute that authorizes any suit by the Attorney General of the United States or the Justice Department that bears he fainest similarity to the bills proposed here in parts 3 and 4 of S. 83. I am not going to say that no such statute exists but I am going to say that no such statute has been found by me, or pointed out to me by any employee of the Justice Department, although I issued a challenge to the Justice Department the week before last to point out such statutes.

Pardon the interruption.

Mr. PATTON. Thus, on the point of whether the Attorney General of the United States should have another assistant, on that point alone, I am not here to argue or debate the question. I state frankly to you that I don't know whether the Attorney General of the United States should have another assistant Attorney General in order to carry out the duties which the laws now impose upon his Department.

I do say this. There is no development that I know anything about, anywhere in this country, which justifies a centralization of law enforcement in Washington, D. C. Looking to this bill and to the provision for an additional assistant, it is obvious what its purpose and

intent is. The bill would impose upon the Attorney General duties which I think the Attorney General of the United States has no business having, that is, the duty to bring an action for a private individual to get redress for that private individual. I do not consider that to be a legitimate function of the Attorney General of the United States.

Again I ask the question, what evidence has been presented to this committee which establishes or tends to show or might even show that our Federal district attorneys and Federal grand juries are not able to enforce the criminal laws in their particular districts? What evidence has there been presented to this committee which establishes or tends to establish that individuals can't really prosecute their own civil actions when they have the basis for doing so? What evidence has been presented to this committee which shows or tends to show that law enforcement on the State and local level has broken down, is inadequate in the prosecution of criminal cases and inadequate for the disposition of civil cases?

I look on this provision of the bill directing the Attorney General to institute a civil action for the benefit of a private individual as really punitive in nature. I don't think there is any other accurate description for it. Any person who comes along and wants to stir up some trouble and make complaint against somebody else, all he has to do is come forward and say he has been discriminated against because of his race, color, sex, national origin, or religion. And if he is able to present a plausible enough story at that time, he gets free counsel; not only that, he gets the staff of the Attorney General of the United States, free of charge, to go into court and prosecute his civil action for him. The defendant, meanwhile, is put to defending all such actions, brought by the United States Government with the full economic power of the United States Treasury behind the plaintiff. The defendant is put to the burden and expense of hiring his own lawyers and defending his own lawsuit as well as he can.

Why don't we simply set up a Federal legal-aid bureau to handle the private litigation of all comers, free of charge?

Assuming that the only basis for the additional Assistant Attorney General in the Department of Justice is to do those duties which are contemplated by Senate bill No. 83, I express to you my opinion that the last thing which the Attorney General of the United States needs is another Assistant Attorney General. I express to you my opinion that the last thing which is needed, in the national interest, is a law which requires the Department of Justice to prosecute civil actions for private individuals.

AMENDMENTS OF PRESENT CIVIL RIGHTS STATUTES

The third category of the provisions of Senate bill No. 83 covers proposed amendments to present Federal statutes on the subject of civil rights. I should like to refer to these proposed amendments in some detail.

Section 121 of the proposed bill No. 83 would amend title 42 of the United States Code, section 1985, by adding these provisions: (1) Authorizing the Attorney General to institute a civil action on behalf of a private party, and presumably this would be an action for damages as well as including an application for an injunction. (I have already commented on the proposal to make the services of the United

States Attorney General available as private counsel in these matters. I think that such a provision is not in the national interest and is completely unjustified.) (2) Provide that the district courts shall have jurisdiction of the proceedings under this section whether the party aggrieved has exhausted "administrative or other remedies" which may be provided by law.

Senator ERVIN. Before you go to that part, I want to say that the provisions of part 3 and part 4 of S. 83 providing that the suit shall be brought for the United States or in the name of the United States are calculated, if not intended, to deprive persons of their rights under Federal statutes to have criminal contempts tried before a jury. Now, of course, proponents of the bill deny that. But when they deny it, they are like the man who took his pistol and aimed it deliberately at another man's head and shot a hole through his skull and killed him. When the man was asked whether he intended to kill the deceased he said, "Oh, no, he had a slight headache. I just attempted to cure his headache."

Now, you and I realize that in the field of criminal law every man is presumed to intend the natural consequences of his act. And I say that when the Attorney General comes down here with a bill which is phrased in such language that its natural and inevitable consequences are to deprive a man of the right to trial by jury in a case where that right would otherwise exist under the Federal statute that he, too, must be presumed to intend the natural consequences of his phraseology despite any denial that may be made in that respect.

Pardon the interruption.

Mr. PATTON. I wonder if the members of this committee recognize the full significance of this proposal which would allow a person to go into district court on a civil-rights complaint without exhausting any administrative remedies which may be available under State law. Does this committee know what has prompted this proposal? Does this committee realize its full significance?

Let me be more specific with respect to our situation in North Carolina dealing with the matter of assignment of pupils to our public schools.

And I wish to add there that I keep talking about North Carolina, and I am interested, Mr. Chairman, in North Carolina.

As I have already said, North Carolina, since 1955, has repealed all of its statutory provisions which require that separate schools be maintained for the white and colored races. Our laws provide that our local school boards shall assign children to the public schools on the basis of certain reasonable administrative standards which are set out in the statute. We have no law, statute or constitutional provision, in North Carolina which requires segregation of the races in our public schools. The fact that we do not have such laws on our books today represents a recognition by our State of the revolutionary change in the Federal Constitution which was made by the United States Supreme Court beginning with its 1954 school segregation decision. An amendment to our State constitution adopted in 1875 provided that we should have a uniform system of public schools and further provided that the children of the white race and the children of the colored race should be taught in separate public schools. The legal effect of this language in our State constitution was in issue in a case before the North Carolina Supreme Court in May 1956, and, in a decision by

that court which was filed June 6, 1956, *Constantian* v. *Anson County* (244 N. C. 221) our court, in a unanimous opinion, had this to say:

Our deep conviction is that the interpretation now placed on the 14th amendment, in relation to the right of a State to determine whether children of different races are to be taught in the same or separate public schools, cannot be reconciled with the intent of the framers and ratifiers of the 14th amendment, the actions of the Congress of the United States and of the State legislatures, on the long and consistent judicial interpretation of the 14h amendment. However that may be, the Constitution of the United States takes precedence over the constitution of North Carolina. In the interpretation of the Constitution of the United States, the Supreme Court of the United States is the final arbiter. Its decision in the Brown case is the law of the land and will remain so unless reversed or altered by constitutional means. Recognizing fully that its decision is authoritative in this jurisdictation, any provision of the Constitution or statutes of North Carolina in conflict therewith must be deemed invalid.

Thus, gentlemen of the committee, our legislature repealed the statutory provisions long established in our State requiring separate schools for the races, and I have just read to you what our State supreme court said with respect to a similar provision in our constitution.

Today, we have no law in North Carolina, constitution or otherwise, requiring separate schools for the races.

I have already described to you the efforts which we have made in our State to meet the problems arising out of these school cases because of the revolutionary change in our Federal law. Fundamental in our opproach is the flexibility and the authority of our local school boards to handle assignment of our children to our public schools. The Federal courts in our area, including the district courts in North Carolina and the Court of Appeals for the Fourth Circuit, have in several cases within the past 2 years upheld North Carolina's school assignment statute. Negro plaintiffs in at least three school cases which have been brought by the NAACP have made every attempt to ignore our assignment statute, and, in doing so, they have ignored the decisions of the Federal courts in our circuit.

One of the latest efforts of the NAACP to bypass our assignment statute and to ignore the administrative remedies which it provides was a case from McDowell County, N. C., which was before the United States Court of Appeals for the Fourth Circuit last fall. In a decision by that court, filed November 14, 1956, Judge John J. Parker had this to say:

It is argued that the pupil enrollment act is unconstitutional; but we cannot hold that that statute is unconstitutional before its face and the question as to whether it has been unconstitutionally applied is not before us, as the administrative remedy which it provides has not been invoked. It is argued that it is unconstitutional on its face in that it vests discretion in an administrative body without prescribing adequate standards for the exercise of the discretion. The standards are set forth in the second section of that act, G. S. (and that means General Statute, of course) 115–177, and require the enrollment to be made "so as to provide for the orderly and efficient administration of such public schools, the effective instruction of the pupils enrolled, and the health, safety, and general welfare of such pupils." Surely the standards thus prescribed are not on their face insufficient to sustain the exercise of the administrative power conferred, as said in *Opp Cotton Mills* v. *Administrator of the Wage and Hour Division of the Department of Labor* (312 U. S. 126, 145): "The essentials of the legislative function are the determination of the legislative policy and its formulation as a rule of conduct. Those essentials are preserved when Congress specifies the basic conclusions of fact upon ascertainment of which, from relevant date by a designated administrative agency, it ordains

that its statutory command is to be effective." The authority given the board "is of a fact-finding and administrative nature, and hence is lawfully conferred."

Judge Parker, writing the opinion for the court of appeals, goes on to say this:

Somebody must enroll the pupils in the schools. They cannot enroll themselves; and we can think of no one better qualified to undertake the task than the officials of the schools and the school boards having the schools in charge. It is to be presumed that these will obey the law, observe the standards prescribed by the legislature, and avoid the discrimination on account of race which the Constitution forbids. Not until they have been applied to and have failed to give relief should the courts be asked to interfere in school administration.

Judge Parker then cites this sentence from the second decision of the Supreme Court in the Brown case:

School authorities have the primary responsibility for elucidating, assessing, and solving these problems; courts will have to consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles.

Why have the Negro plaintiffs in these cases consistently ignored the decisions of the Federal courts and the decisions in our own State court concerning this assignment statute? In my opinion, the NAACP is not interested in establishing the individual rights of individual pupils but wants to use the power of the State of North Carolina and the power of the Federal courts to force mixing of the races in our public schools, whether individuals involved want that or not.

It is my supposition that this is the basic reason why the Negro plaintiffs in the cases I have referred to have consistently refused to follow the plain and reasonable procedures set out in our pupil-assignment statutes.

And now they would like to change a basic rule of Federal procedure which has been long established, a rule providing that individuals should not come into Federal court making complaints about State action until they have exhausted the administrative remedies provided under State law.

I am wondering if the members of this subcommittee and the Members of Congress in general realize the full significance of this proposed change in our Federal procedure and statutes.

For example, do you realize that the Federal courts, when they say that an individual must exhaust his "administrative remedies" available to him under State law, require that the administrative remedy must be a reasonable and adequate one? The Federal courts under the case law do not require an individual to pursue a fruitless remedy, do not require a plaintiff to go through an administrative proceeding which is inadequate.

Our court of appeals has recognized that North Carolina has an adequate and reasonable administrative remedy. I am not familiar with the details of legislation which have been passed by some of the other Southern States, but in some instances I do know that the Federal courts have ruled that certain administrative remedies set out in the State law were not adequate, and in those cases the Federal courts have ruled that plaintiffs did not have to pursue or exhaust those inadequate remedies.

But is this proposed legislation directed at the inadequate and unreasonable State administrative remedy? The answer is, "no." This proposed change which is now being considered by the subcom-

mittee a provision in this bill which I suggest to you was put in there at the insistence of the NAACP and no one else, is a direct slap at the State which does have a reasonable and adequate administrative remedy.

I say to you that this specific provision is a conclusive and convincing example of the spirit of vindictiveness which animates this proposed legislation. The sponsors of this legislation are, in my opinion, not approaching this problem from the standpoint of attempting to reach reasonable solutions of what any thinking man must recognize as the most serious and disturbing domestic problems which have confronted our Nation in many, many years.

This type of legislation demonstrates a disdainful disregard for the efforts of State authorities to attempt to solve these serious problems within the framework of law and order.

I find it difficult indeed to have any sympathy for the attitude and the philosophy which is exemplified by this sort of proposal.

I hope indeed that this subcommittee, and in turn the full committee, and after that the Senate of the United States, will have the good judgment and the proper interest in the national welfare that it will not bring about a change in Federal court procedure which, in my opinion, is so completely unjustified and which is so completely animated and motivated by a spirit of animosity and vindictiveness.

Senate bill No. 83 goes on to propose changes to title 28 of the United States Code, section 1343, and title 42 of the United States Code, section 1971. In my judgment, these proposed changes are not necessary and they are presented and sponsored in that same vindictive spirit that I have already mentioned.

In particular, look at section 131 of this bill, to the proposed changes in section 1971, title 42 of the United States Code. Compare this proposed amendment with the present language of section 1971. Look how broad the present section 1971 is in protecting the right to vote at any election.

Note that the amendment would provide that no person shall "attempt" to intimidate, threaten, or coerce another person for the purposes set out in this section.

Has anyone suggested to this committee what that specific language is designed to cover? How do you ascertain whether an individual attempts to threaten another person for the purpose of interfering with his rights? I can understand that it is possible, as a matter of law enforcement, to get your mind around the concept or around the fact of intimidation, or of threat, or of coercion. But how do you get your mind around the act of attempting to threaten?

How would you describe the crime of attempting to threaten someone?

This proposed amendment goes on to provide again that the Attorney General may institute civil actions for private individuals for injunctive or other relief where someone complains that their rights are violated as set out in that section, and again provides that an individual may go into Federal district court whether or not he has exhausted "any administrative or other remedies."

I began my statement to this committee with an effort to describe to you the attitude and the reaction of the people of North Carolina, as I understand it, with respect to what I have described as the "revolu-

tionary change" of Federal constitutional law; a revolutionary change accomplished by the United States Supreme Court.

I attempted to give you the reaction of the lawyer to that procedure and method of change in constitutional interpretation. I attempted to convey to you the attitude and the feelings of the average citizen of our State with respect to what the United States Supreme Court has done in interpretation of the 14th amendment.

I think it is fair to say that the attitudes which I described as representative of North Carolina are also attitudes fairly representative of each and every other southern State which is most directly affected by this revolutionary change in our Federal law.

In other words, gentlemen of the committee, I suggest to you that not only do we have a problem of what to do with respect to the results and consequences of this change in Federal law, but we also have a problem with respect to the attitude and feelings of our people on law itself. I mean by this that any civilized community, State, or Nation, if it is to live under a system of law and order, must have a citizenry which has a respect for the ideal of law.

I also say to you that this is not a one-way street. The officials who hold responsible positions in our Government, whether they be in the executive, legislative, or judicial branches, are also charged with the duty of protecting and furthering the respect of all citizens for the ideal of law, for respect for law.

Responsible officials and leaders in our Government, whether judicial, legislative, or executive, have a duty not to take those precipitous actions which skirt the precipice of the implausible, which try the patience of the citizens, which are suspect on reasonable grounds of legality.

I say that the officials of our Government have a duty, a constitutional duty not to take that sort of action.

With the North Carolina Supreme Court, I say that the interpretation which is now placed on the 14th amendment cannot be reconciled with the intent of the framers and ratifiers of the 14th amendment, cannot be reconciled with the action of the Congress of the United States and of State legislatures, or long and consistent judicial interpretation of the 14th amendment.

Also with the North Carolina Supreme Court, I recognize that the Brown case is now the law of the land and will remain so unless reversed or altered by constitutional means.

Having said this, I cannot emphasize too strongly my earnest recommendation to this subcommittee that it recognize the conditions which exist in every part of our Nation.

In my opinion, this proposed legislation now before your committee can only have the effect of agitating and stirring up a situation which is already agitated and stirred enough.

We already have enough Federal laws on the subject of civil rights which will cause dissension, contention, and regrettably, probably even violence, for years and years ahead without asking for more.

In particular, I deplore what is exemplified in these bills as a centralization of law enforcement in Washington, D. C. I deplore and greatly regret what I perceive to be the spirit of animosity and vindictiveness running throughout this proposed legislation.

I have attempted in my presentation to this committee to tell you those things which I believe you should know and which I sincerely

believe would be of some help to you in making up your minds on this sort of legislation.

I recognize this one thing. More and more as the days go by there seems to be less and less room for the calm consideration, for the efforts of one who would attempt not to get in the ditch on either side of the road.

On the one extreme we are confronted with the blatant cries of the NAACP and other pressure groups which make no bones about the fact that they intend to attempt to practice a little political blackmail, and that Negro votes will be granted or withheld in accordance with which political party can meet the highest bid.

In this unseemly scramble, which in the months and years ahead will have its greatest impact upon public education, I suggest to you that the actions of the extremists and the pressure groups on this question indicate to me quite clearly that they would ignore what I would say is the most important person in this whole matter. That person is the child of school age who needs an education.

I am not impressed with a schoolhouse which is ringed about with guns, troops, and tanks. If there are certain factors which occasion psychological damage to a child, I can think of none more serious than situations where children are forced to associate with each other in an atmosphere of hatred and violence.

It may be that the time will come when people will not quarrel with each other, when there will be no group animosities, dissensions, or hatred. But if and when that time does come, we will have that sort of situation because the attitude which makes it possible is embedded in the hearts and minds of the people themselves.

Sometimes in the consideration of proposed legislation, we are carried away by admirable aims and ideals, only to find that, in an effort to put them into effect, we create a Frankenstein which ultimately returns to plague us.

It is true that we must make democracy a living thing in the eyes of the world and that lipservice is not enough but we must carefully consider the means used to accomplish this ideal.

Democracy cannot be made to live by the use of totalitarian methods, one of which is the use of a Federal Gestapo. We can never make progress by substituting coercion for good will. Some of our problems must be solved by the application of the laws of God and not those of man.

Would Congress, by the enactment of this proposed legislation, be making a valuable contribution to our progress as a nation? I am forced to answer this question in the negative. You, as the duy elected representatives of the people, will, by your action, have a great influence on the future of our great Nation, and particularly on the future of the South.

It is my hope that you will not, by your action, sacrifice commonsense and good judgment on the altar of political expediency.

Senator ERVIN. I would like to say I have listened to all of these hearings, and I consider your statement as sane and as fine a statement as has been made.

I would like to ask you if in your opinion as a lawyer, there are not sufficient statutes already upon the Federal statute books, to enforce by orthodox criminal actions and civil proceedings every civil right belonging to any citizen of the United States?

Mr. PATTON. I would answer that question, Mr. Chairman, emphatically "Yes," that there are sufficient statutes on the books already to take care of any legitimate situation.

Senator ERVIN. I will ask you further if the history of the English-speaking race does not show that our forefathers fought to secure to each individual the right to indictment by grand jury in case he is charged with an infamous crime, the right to be tried by a petit jury, in either a civil or a criminal case, and the right to confront and cross-examine his accusers?

Mr. PATTON. They did, Mr. Chairman, and the reason behind that was the fact that they, when they came to this country, came from a locality where they did not have that, and they had been downtrodden as a result, and they were very, very careful to protect the rights of each individual.

Senator ERVIN. I will ask you if you agree with me on this: That one of the most fearful lessons of history is the lesson that no man or group of men can be safely trusted with governmental power of an unlimited nature?

Mr. PATTON. That is true, sir.

Senator ERVIN. I will ask you if from your knowledge as a lawyer you do not realize that the basic foundation upon which all equitable proceedings rests is that equity will not be resorted to where there is an adequate remedy at law or by administrative procedure?

Mr. PATTON. That, Mr. Chairman, has been a fundamental principle of law ever since I have known anything about the law, and I would term it a mud sill in our judicial procedure.

Senator ERVIN. I will ask you further if the provisions of parts 3 and 4 of S. 83, which vest in the Attorney General of the United States the discretionary power to bring one of these equitable proceedings, and to strike down by so doing State administrative remedies, is not an entire repudiation and perversion of the very basis upon which equity rests?

Mr. PATTON. Exactly, sir, that has been a legal principle since I have known anything about the law.

Senator ERVIN. I will ask you if the provisions of parts 3 and 4 authorizing the Attorney General at his discretion to bring an equitable proceeding as authorized by these new proposals does not enable the Attorney General, in his discretion, to bypass and circumvent all of the basic constitutional rights guaranteed to our citizens by our Constitution, such as the right to be indicted by a grand jury before one is required to answer, and the right to be tried by a petit jury both in civil and criminal cases before one can be adjudged liable criminally or civilly, and the right to confront and cross-examine one's accusers?

Mr. PATTON. I agree with you, sir, and let me say in addition to that, that as I said, being interested above all in North Carolina and being interested, of course, in my Nation, if that bill is enacted in its present form, it will, to my mind, be impossible in my good State to secure a decent citizen I would say to sit on a school board, to conduct an election, or to do any other public duty in which we now pride ourselves in the fact that we have good, substantial, outstanding citizens on school boards, holding elections, and other public offices.

If he takes that office with the idea that if he does not go according to the whims of everybody, he will be confronted by a civil action at the Government's expense, and that he is likely to get restrained from undertaking to do what he has decided the law is, and then if, after an injunction is issued, he comes back in and gets cited for contempt, he will land in jail without any jury trial.

Senator ERVIN. I will ask you as a lawyer not only do you have that situation with respect to the parties to the suit, but I will ask you if people who are not parties to the suit and who merely express their disagreement with the injunction issued by the court, do not stand in jeopardy of being attached for contempt of court and tried in a proceeding in which they have no right to contest the propriety of the injunction, and in which they can be held liable for contempt and sent to jail, notwithstanding the fact that they act in the utmost good faith in the matter?

Mr. PATTON. Yes, sir; I agree with you, Mr. Chairman, and I hope and it is my sincere prayer that the time will never come in this country of ours when a man cannot stand up and disagree with another man's opinion.

Senator ERVIN. I will ask you further if from your experience as a lawyer you don't know that ordinarily restraining orders and temporary injunctions are issed on affidavits rather than upon the oral testimony of witnesses, resulting in the denial of the right of confrontation and cross-examination, and if you don't also agree with me in the observation that the only way in which truth can be developed in court is where the use of the weapon of cross-examination is permitted?

Mr. PATTON. That is true, Mr. Chairman, and let me add this: That I never did, in my earthly existence, realize the full import and the power of the injunction until I assumed my duties as a superior court judge, and it in reality scared me, the power that they had, and that being true I made up my mind that under the law as we had it then, maybe we had too much power, and that it was dangerous, and that I would exercise that power cautiously and sparingly, and I did so do during my tenure on the bench.

Senator ERVIN. I reached the same conclusion as a superior court judge. We have a padlock statute in North Carolina. I used to refuse to issue a restraining order on the padlock statute because of an experience I had.

I had a case in the superior court of Cabarrus County, N. C., where a complaint was presented to me and I was asked to follow the usual procedure and issue a temporary injunction on affidavits. I refused to do it. Counsel for the plaintiffs thereupon carried their motion to another judge who issued a temporary injunction. Under this temporary injunction the place of business of the defendant was closed up for approximately 3½ or 4 months.

I happened to go back to Cabarrus County when that case came on for trial on the merits. The plaintiffs asked for a continuance. The courthouse was full of witnesses they had summoned. I asked them the grounds of their motion for a continuance, and they said that they had not been able to get out evidence to sustain their allegations.

There was a case where an injunction was issued on affidavits. The man's business was closed up for 3½ or 4 months. When the case

came on for trial on its merits, those who had brought it had to confess they had not been able to get a scintilla of evidence to back up the affidavits.

I will ask you if in your judgment that could not happen time and time again under proceedings to be authorized here?

Mr. PATTON. It could, Mr. Chairman, and in a case of that kind you could not in dollars and cents compensate that individual for the damage that you have done to him.

Senator ERVIN. Then I will ask you this further question: If there is not a rule of law which is recognized by all courts that where a fact is in controversy and pending the litigation that fact becomes accomplished, that thereafter the court will refuse to try that case on the ground that the question has become moot.

So I ask you if these recommendations of the Attorney General of the United States, which would permit temporary injunctions to issue on the affidavits of witnesses not subject to cross-examination, should be adopted by Congress and if the Attorney General should bring about by temporary injunction the thing he desired to bring about, such as, for example, the registration of a voter, and if the voter should be registered and voted in the election under the temporary injunction, would not the court refuse to try the case on the merits after the election on the ground that the matter in controversy has become moot?

Mr. PATTON. Yes, sir.

Senator ERVIN. I believe it was a great President, Woodrow Wilson, who said that liberty had never come from the extension of governmental powers, but on the contrary has always come from limitation of governmental powers.

I will ask you if this fact is not recorded on each page of our history and recorded many times in blood: That no man, whether he be a judge, an attorney general, or anybody else, can be safely trusted with unlimited governmental powers?

Mr. PATTON. That is true.

Senator ERVIN. And I will ask you if it was not a recognition of that fact by our ancestors that caused them to put in the Federal Constitution, and the constitutions of our States, these great safeguards, such as trial by jury?

Mr. PATTON. Yes, sir; that is true. And, Mr. Chairman, this thing has given me great concern and we have studied it in my State not from a lopsided or one-sided viewpoint but from every angle.

The State of North Carolina has taken, I would say, an outstanding position even prior to the Brown case in the solving of these problems, and we had the finest race relations in North Carolina that I know of anywhere else, and when I go to thinking about these things and think about our Nation, Mr. Chairman, sometimes I get back and my associates sometimes accuse me of being maybe a half preacher and going back to the Book of Books, and if you will remember a verse which said in one place this—and I want to leave this with you as applicable to our Nation:

> For promotion cometh neither from the east nor the west nor from the south, but God is the judge. He putteth down one and setteth up another.

The only way that we can ever solve these problems is by the spirit of cooperation and good will, and not legislation or injunctions or suits or anything else.

The people themselves under the guidance of Almighty God must solve them themselves.

Senator ERVIN. And I will ask you if race relations must not be solved down in the local communities where people live?

Mr. PATTON. Yes.

Senator ERVIN. I hate to ask another question after that very fine statement.

Mr. PATTON. Go right ahead, sir.

Senator ERVIN. I would like to call your attention to some definitions:

> An injunction is a judicial process issuing out of a court of chancery whereby a party is required to do or to refrain from doing a particular thing.

That is from the *Commission Row Club* v. *Lambert*, Missouri Appeal case (161 Southwest, 2d, at p. 732).

And another definition from *State* v. *Gilburt* (560 Ohio State, p. 575, and 47 Northeastern, p. 556), where this is given:

> Judicial process in its largest sense comprehends all the acts of the court from the beginning to the end.

And also this definition from *Ex Parte Hill* (165 Alabama 365, 51 Southern 787):

> Judicial process includes the mandate of a court to its officers, and a means whereby courts compel the appearance of parties, or compliance with its commands, and include a summons.

Then this definition from 50 Corpus Juris Secundum, page 572:

> In its largest sense, the term comprehends all the acts of the court from the beginning of its proceedings to the end.

I ask you that for this reason, and this to my mind illustrates some of the terrible emotional state in which this country has worked itself into on racial matters. The Attorney General asks the Congress to amend title 42, section 1985 of the United States Code as set forth in the most recent pocket parts to the United States Code Annotated, so as to allow him to obtain injunctions, which according to these definitions are judicial processes, in equitable proceedings where there is no right to trial by jury and no secure right to be able to confront and cross-examine your adversaries.

And another section, title 42, section 1993 of the United States Code provides in express terms that the President of the United States has the power to call out such portion of the Army or the Navy or the militia as might be necessary to enforce judicial process under the section which the Attorney General desires to amend, namely, section 1985 of title 42.

I ask if in your opinion the President of the United States would not have the authority under these statutes to call out the Army or the Navy or the militia to enforce the decrees in these proceedings in which we are asked to authorize judgments to be entered without trial by jury.

Mr. PATTON. I think certainly he would be authorized to do that.

Senator ERVIN. Do you think there could be any justification because of anything that exists in North Carolina or elsewhere so far as you know for any such power?

Mr. PATTON. No, sir; I do not.

Mr. Chairman, there is one thing in there in your question, you raised the question that there was no sure guarantee of the right to cross-examine the witnesses.

That would be true if he were asked to enter a temporary injunction. Of course I presume that under the provisions of the bill, if it came on for final hearing, that he would be entitled to do so.

Senator ERVIN. Unless he was deprived of the hearing on account of it becoming moot.

Mr. PATTON. That is right.

Senator ERVIN. I ask as a practical matter under these provisions for striking down State administrative or other remedies, if the Federal courts would not be given the power under that statute to virtually supersede school boards and election boards in all of the States of the Union?

Mr. PATTON. They would, sir. And let me say this to you: that I am sure that you know that we have had no violence of any kind or description in North Carolina. Whatever differences we might have had, we have gone into court and settled them in a legal, legitimate manner, and we have not had the semblance of disorder, and it certainly is my sincere hope that that condition will continue.

Senator ERVIN. Now this one final question: I ask you from your experience and knowledge as a lawyer and judge if these bills under the guise of conferring so-called civil rights on the colored race would not deprive all American citizens, including the colored race, of some of their basic constitutional safeguards?

Mr. PATTON. Yes, sir. While you might out of one corner of your mouth be saying that one group is getting something, if you will sit down and analyze, he is losing more than he gains, and I call this to your attention, that that bill is a two-edged sword. It can't be used just on one; it is applicable to everybody if it is carried out according to the wording of the statute, and I certainly hope the time will never come in this great country of ours when the Federal authorities would pick out one group to use it against, and ignore the other.

There is just as much chance that a disgruntled white citizen of North Carolina could come in and embarrass one of my most respected colored citizens. We have on our State board of education in the State of North Carolina one of the most repected colored citizens that I know of in North Carolina.

Senator ERVIN. Dr. Harold Trigg?

Mr. PATTON. Exactly, sir; and you can go down there—some disgruntled white person can go down there and into the Federal court at Government expense and embarrass him and chase him all over the country.

It can work both ways. You can't figure it out here that it is a one-way street.

Senator ERVIN. There was some testimony here the other day to the effect that law and order had broken down in the South and the charge was almost made that the courts had ceased to function. I wish you would give us your opinion and your knowledge of that.

Mr. PATTON. In North Carolina?

Senator ERVIN. Well, just sort of generally. I will ask if all the courts in North Carolina are not open to any citizen, and if law and order does not prevail in North Carolina?

Mr. PATTON. It does, Mr. Chairman; it has, Mr. Chairman, ever since I have known anything about the law, and I hope that nothing will be done that will agitate the people to such an extent that it will disrupt our good order in North Carolina. And let me say this: That in my experience on the superior court bench in North Carolina—and I am sure, Mr. Chairman, it has been your experience—that when it comes into court, there is no race, there is no color, there is nothing else except does that man have a legitimate claim or is he guilty of what he is charged with.

We try in North Carolina, and I think we have been successful, to administer justice both on the civil side of the docket and on the criminal side on a fair and impartial basis.

Senator ERVIN. Judge, I want to thank you for presenting your testimony. I want to thank you for coming to the subcommittee and presenting your views on this matter.

Mr. Slayman, do you have any questions you would like to ask?

Mr. SLAYMAN. No; I do not, Mr. Chairman; but I do want to make a short statement.

Judge Patton, I am sure you know that there are seven subcommittee members, but that all seven are not here. You have been most polite. I think you should realize, or at least we want you to know, that the full Judiciary Committee, the parent committee, is meeting today, but it had not planned to originally, when we scheduled you.

Senator Hennings, the regular chairman of this subcommittee, is also chairman of the Senate Rules Committee. He had hoped that, after their regular meeting today, he would be able to get over here; and Senator Langer is in the hospital recovering from a serious illness. Also, for your information, I want you to know that this stenographic transcript is sent every morning to each of the seven members of the subcommittee, so that each one of them, even though all of them were not here today, each one of them will have a copy of your remarks in the morning.

Mr. PATTON. Let me say this: That I appreciate the situation. I know it. I know what a Senator has to do. I know how many commitments he has; and that is the big reason why maybe I bored you to some extent this morning by reading this long thing. I wanted it where it would go in the record as it is, and I did not want it to go in in some other way.

I want you, Mr. Chairman, to express to the other members of this subcommittee my deep and heartfelt appreciation for the privilege of coming up here and expressing the view of my State.

Senator ERVIN. Thank you.

The next witness is Mr. Merwin K. Hart, who is, I believe, the publisher of the National Economic Council Letter, and who, as I understand it, Mr. Hart, you volunteered as a witness because of your great interest in the fundamental principles which you think are involved in this matter, because of your opinion about the crucial importance of these questions to the interests of the country as a whole.

STATEMENT OF MERWIN K. HART, PRESIDENT OF THE NATIONAL ECONOMIC COUNCIL

Mr. HART. That is true, sir.

Senator ERVIN. Suppose you identify yourself for the record by stating your name and address and then proceed.

Mr. HART. My name is Merwin K. Hart. I am president of the National Economic Council with its main offices in New York City. Our organization was established in 1930, and ever since then we have been working to back up the Constitution of the United States as we understand it.

We believe the pending proposals for the setup of a bipartisan civil rights commission and a civil rights section in the Department of Justice, together with other proposed new laws, proposed by the Chief Executive, and giving the Federal Government power to seek preventive relief in civil rights cases, to be of clear Communist origin. The National Economic Council opposes any move by the Federal Government into this field. Articles IX and X of the Bill of Rights specifically reserve to the States and to the people all rights not expressly delegated by the Constitution to the Federal Government nor prohibited by it to the States. No language in the Constitution is more clear than this.

The only possible warrant for the pending legislation is to be found in the 14th amendment, which, as David Lawrence said in his column of July 26, 1956, was "ratified" only by forcing it through the legislatures of 10 Southern States in 1868, literally at the point of a bayonet.

Since the tyranny of 1868 the Supreme Court has avoided deciding any case that has come before it so far as it involved the legitimacy of the 14th amendment. As recently as 1951 the Supreme Court disapproved what it called the "conquered province" theory that dominated the Congress in 1867 and 1868, and said that the 14th amendment—

was not to be used to centralize power so as to upset the Federal system.

It seems to us, Mr. Chairman, that these measures would definitely do exactly that. Yet the precise effect of these pending bills is to lay the foundation for wiping out the Federal system. If Congress can do this, it can do anything. State and local rights will be well-nigh wiped out. It will remain for the people only to pay taxes and comply with every bureaucratic rule. Liberty will be gone.

We said these measures are of Communist origin. Back in 1935 the Communist Party prepared a booklet entitled "The Negroes in a Soviet America," in which the Negroes of the South were urged to revolt and set up a separate government and to apply for admission to the Soviet Union. Of course, nothing came of this at that time. But the forces then at work under Communist inspiration are in part the forces that have inspired the American Civil Liberties Union and the NAACP to press for so-called civil rights legislation.

Mr. Chairman, I have here a copy of that pamphlet "Negroes in a Soviet America" and I just want to read from two lines on page 38, which are as follows: It is a statement of what the aim of the people who wrote this pamphlet was:

Any act of discrimination or of prejudice against a Negro will become a crime under the revolutionary law.

And that, it seems to us, is the principle that is back of this legislation.

In our opinion the Negroes of the United States include many of our most useful citizens, and they can be found in nearly all parts of the United States, and many of them, I am convinced, in talking to quite a few, have no interest in taking any undue advantage of the country.

Conditions have improved steadily in race relations for many years, and were continuing to improve down to the decision of May 17, 1955.

Mr. Ralph de Toledano had an article in the American Legion Magazine of May 1954 on this business of civil liberties. His story was mostly about the American Civil Liberties Union. He stated certain conclusions of which the following were two:

1. In the established sense of the word the American Civil Liberties Union is not a Communist front—even though Earl Browder, in sworn testimony at the time he was the Communist leader in the United States, characterized it as a "transmission belt" for Communist ideas.

2. It is certainly of tremendous value to the Communist movement. In the guise of serving civil liberties it disseminates to all corners of the country the kind of propaganda which best serves Communist purposes by spreading dissension, confusion, and false information.

While it has been claimed that Mr. Roger N. Baldwin, who for many years was the guiding spirit of the American Civil Liberties Union, has in recent years somewhat modified his views, yet on page 7 of the 30th Anniversay Year Book, published in 1935, of the Harvard College class of 1905 of which he was a member, he wrote:

I have continued directing the unpopular fight for the rights of agitation, as director of the American Civil Liberties Union; on the side engaging in many efforts to aid workingclass causes. I have been to Europe several times, mostly in connection with international radical activities, chiefly against war, fascism, and imperialism, * * * I am for socialism, disarmament, violence, and compulsion. I seek social ownership of property, the abolition of the propertied class, and sole control by those who produce wealth. Communism is the goal * * *

Senator ERVIN. Pardon me, that is a rather queer statement, isn't it? A man says that he is for violence and compulsion.

Mr. HART. Yes, sir; it is. Mr. de Toledano quotes Roger Baldwin as having included the following passage in an article Baldwin wrote for the propaganda organ, Soviet Russia Today.

Those of us who champion civil liberties in the United States and who at the same time support the proletarian dictatorship of the Soviet Union are charged with inconsistency and insincerity * * * If I aid the reactionaries to get free speech now and then, if I go outside the class struggle to fight censorship, it is only because those liberties help to create a more hospitable atmosphere for working-class liberties. The class struggle is the central conflict of the world; all others are incidental. When that power of the working class is once achieved, as it has been only in the Soviet Union, I am for maintaining it by any means whatsoever.

Mr. SLAYMAN. What is the date of that?

Mr. HART. I haven't got the date of that, Mr. Counsel. I can supply it. I should have had it in here.

It is our contention, Mr. Chairman, that at the instance largely of minorities this country is being overgoverned. The Federal Government has spread its tentacles to the point where it is interfering in many of the most minute details of the lives of its citizens. That is one reason why we have a $71.8 billion Federal budget—a budget that

I am glad to note is coming daily under greater and greater fire from all parts of the country.

The United States Government made a great mistake right after the Civil War in attempting to force the Southern whites into subjection to the Negroes. It was one of the cruelest injustices ever perpetrated in a country that claimed to be free.

If these pending measures pass, the country will simply revert to the days of reconstruction.

The National Economic Council has been thoroughly opposed to the decision of the Supreme Court in the so-called segregation case in May 1954. That was not a legal decision; it was a social welfare decision that threw law and Constitution to the winds.

Prior to that decision whites and Negroes had learned to live together in the South in the only way that people of different races can learn—namely, by mutual patience and by the passage of time. I have been in all of the Southern States, Mr. Chairman, many times over a period of 50 years, and I think I have had an opportunity to observe the progress made.

Does anyone suppose that they would have learned to live together in the South had there been a continuance of reconstruction? No more will they learn under a continuance of forced desegregation.

In the preamble of the Constitution the crowning objective was stated to be—

to * * * secure the Blessings of Liberty to ourselves and our Posterity * * *

This meant not only the perpetuation of national liberty but also of personal liberty—always under reasonable laws that are in the interest of the people as a whole.

The passage of these now-proposed laws would still further curtail the liberty of individual Americans. To a degree that only time would tell, it would put them under the tender mercies of bureaucrats.

It would not be merely the bureaucrats now holding office; it would be a fresh bunch of bureaucrats, which never would be less numerous than at the start, and whose continued livelihood would depend on carrying further and further the process of intimidation and tyranny.

The people in the United States are fed up with new laws and additional taxes to enforce those laws. We have just about reached the breaking point.

The President has stated the great objective of his administration is peace. But most of the courses taken by the United States since the end of World War II have provoked war—or at least tensions—rather than peace.

It is our contention that while peace is of great importance the primary objective is liberty—the continuance of the liberty we inherited from our forefathers.

If we drive our citizens more and more with regulatory legislation, under which certain people will be penalized while others become wards of the State, we will not further peace. Instead we will so weaken our country that in event of serious war the chances of our losing would be enhanced.

While the first effect of these pending measures would probably be in the Southern States, yet ultimately they could be used to stamp out the rights of the majority anywhere in the country, and in my opinion they almost certainly would be so used.

Any minority in America has a right to set forth its ideas for its own improvement and advancement. But if the Congress and the administration are to mold their laws and their policy to suit these minorities, then the vast majority of Americans will find their rights infringed upon, restricted, and eventually destroyed. That is precisely what has been brought about in the Southern States by the antisegregation decision.

Civil liberties must be for the majority at least as much as for minorities.

The people of the several States want their State's rights respected. They want to decide themselves these personal questions that so greatly affect their liberty. They do not want them decided for them by experts in Washington, some of whom are international Socialists with little knowledge of and no interest in the American form of government.

We urge that these measures be defeated.

Senator ERVIN. I am forcibly struck by several of your observations, mainly the one that so much of the present trouble grew out of the fact that there was an effort at one time—that is, during reconstruction—for Congress to take charge of the Southern States. My State of North Carolina, when it was allowed to govern itself in some kind of fashion, rejected the 14th amendment. Then we were told that we could not have any representation in Congress until we ratified the 14th amendment and adopted a State constitution which Congress found to be in harmony with the 14th amendment. We had an election for a constitutional convention. I have heard older men of my community tell that many of them were disfranchised by the Reconstruction Acts, that the disfranchised sat on fences and watched others, including recent slaves, go to the polls between rows of Federal bayonets and cast their ballots, and that by an election of that kind a convention was called to draw a new State constitution. One of the strange things about this convention, particularly with reference to the decision of May 1954, was the fact that this very convention which adopted a constitution that was found by Congress to satisfy the 14th amendment provided by resolution that the schools for the white and colored races should be segregated.

This action satisfied the then existing Congress, many of whose members participated in the drafting of the 14th amendment. It has taken several generations for the South to dig out from under the situation brought on us by reconstruction. As you point out so well, I think we have made remarkable progress.

I think that, so far as North Carolina is concerned, the races have learned to live together in peace and harmony, side by side. We are making remarkable progress.

I am rather proud of the progress North Carolina has made under difficult situations. I also take pride in the fact that thus far we have been able to go along without any violence of any kind growing out of these matters.

I share your grave concern for the trend of the country. If I hadn't, I would not have relinquished my comparatively peaceful life as an associate justice of my State supreme court for the turmoil of the Senate. I observed the trend of the Nation toward centralization and toward the confiscation of the earnings of our people by Federal income taxation. As a consequence, I accepted an appointment to

the Senate in the hope that I might assist in preserving local self-government in America. When the people of the Thirteen Original Colonies drafted their constitutions, they put in first place declarations to the effect that the Colonies had the exclusive right to regulate their own internal affairs. They put these declarations in first place because local self-government was the political concept nearest to their minds and hearts.

I judge that you share my conviction that these proposed so-called civil-rights bills threaten to destroy for all practical purposes the power of the States to regulate matters which can only be handled on the State level.

Mr. HART. That is my belief entirely.

Senator ERVIN. I think you also share my conviction that these so-called civil-rights bills, if enacted into law, would curtail the civil rights of all American citizens.

Mr. HART. All the people.

Senator ERVIN. And you can't take away the civil rights of all Americans without taking away the civil rights of the very group in whose name these bills are advocated.

Mr. HART. Very likely, many of those who are proposing and pushing these bills may find themselves, perhaps fairly quickly, victims of the same engine that they have set up.

Senator ERVIN. I think that our experience in the past has shown that there is nothing more dangerous than what has been called government by injunction. Is that not true?

Mr. HART. Yes; I think that is true in a number of cases.

Senator ERVIN. I want to thank you on behalf of the committee, Mr. Hart, for coming here and giving us the benefit of your views on this most momentous legislation.

Does Mr. McLean wish to testify?

Mr. MITCHELL. Mr. Chairman, he is here. And at the committee's pleasure, I have some material in my office, I could get it in a taxicab and bring it back.

Senator ERVIN. I am ready to take his testimony, providing somebody doesn't send a sergeant at arms to restrain me.

I don't know whether he wants to go back to North Carolina or would just as soon wait until tomorrow.

How long will it take you?

Mr. MITCHELL. It won't take more than 10 minutes. There is another witness here. I won't take more than about 10 minutes.

Senator ERVIN. We will wait for you.

STATEMENT OF ALEXANDER FAISON, NORTHAMPTON COUNTY, NORTH CAROLINA; ACCOMPANIED BY JAMES T. BLUE, DIRECTOR, AMERICAN COUNCIL ON HUMAN RIGHTS, WASHINGTON, D. C.

Senator ERVIN. What is your name?

Mr. FAISON. My name is Alexander Faison.

Senator ERVIN. You are from Durham County?

Mr. FAISON. Northampton County.

Senator ERVIN. What is your name?

Mr. BLUE. I am James T. Blue. I am director of the American Council on Human Rights.

Senator ERVIN. What is your address, for the record?

Mr. BLUE. Here in Washington, 1130 Sixth Street NW.

Senator ERVIN. Proceed.

Mr. FAISON. I am presently a student in North Carolina College, second year.

On May 11, at approximately 11 o'clock, I presented myself to the registrar at the Seaboard precinct for registration. At the time I arrived for registration, Mrs. Sarah Harris was in for registration. She was held for approximately an hour before she was let out. When she was let out she was advised that she had failed the examination.

After Mrs. Harris, another young lady went in, and she was registered. And after about 45 minutes, my brother was admitted, James H. Faison, Jr., who is also a student at North Carolina, and he was registered. After he was out, another fellow went in, and he was held for approximately 40 minutes to an hour, and during that time he was given a long, legal sheet, onion skin, carbon copy—not the original copy—of parts of the constitution of North Carolina to read. And he was turned down.

After his departure I went in. It was about 2 o'clock, or possibly a little after. I was given the same legal sheet of paper with the parts of the constitution written on it. I was asked to read it. I read it through. And after I had read it the registrar, Mrs. Helen Taylor, said that I mispronounced some of the words on the sheet.

At that point she pointed out the words on the sheet, and asked me to pronounce the words again. And I did. After pronouncing the words, she asked me for a definition of the words. I gave that, also. After giving the definitions, she asked me to interpret—to give her a general idea of what the sentence meant that the word appeared in. And she said, "I am sorry"—and I asked her, I said, "Do you mean to say that if I don't change the definitions of the words I have given and the interpretation that I get from this that I have failed?"

She said, "That is right."

So I said, "Well, there is no need for me to go any further."

So, at that point I departed. And approximately 2 hours later I had retained a lawyer. And I went back to the Seaboard precinct for registration.

At that point, Mrs. Maggie Garrison also had retained the same lawyer with me. And we both entered with Attorney Walker.

Attorney Walker, when we walked in, was asked if he wanted to register. And he said, "No." He was asked if he wanted to see the registrar, and he said, "Yes." And he started to identify himself. And she said, "No, I know you," and told him to wait outside. And he said, "No; I will wait in here." At that point, the discussion between the two, Mrs. Taylor and Attorney Walker, began as to why Mrs. Garrison and I were turned down for registration. And she stipulated that we were turned down for not reading and writing to her satisfaction.

However, I never did any writing, because I refused, after I had been turned down on the reading proposition.

And there were words passed between Attorney Walker and Mrs. Taylor about why I was turned down and Mrs. Garrison was turned down.

And as a result, Mrs. Taylor asked Attorney Walker out. And he asked her—he said, "Are you going to register my applicants?

And she said, "No." He said, "O. K., then, I will see you in court."

Well, approximately an hour later, maybe—it might not have been that long—Attorney Walker was going back to Weldon, where his office was, and he was stopped by a county sheriff. And he was told——

Senator ERVIN. Where were you? With him?

Mr. FAISON. No; I was behind.

Senator ERVIN. All you know about that is hearsay?

Mr. FAISON. No; I was trailing Attorney Walker.

So I passed Attorney Walker, and I was going to Weldon—I didn't know that he was a county sheriff, because he was driving an unmarked car. I was later informed that Attorney Walker had been arrested for disorderly conduct and trespassing, and had been taken to the jail in Jackson, which is the county seat of Northampton County. He was out on bond, I believe it was $250, I wouldn't say definitely, I believe that is what it was.

And on the following Wednesday, a trial was held where Attorney Walker was found guilty of disorderly conduct and trespassing. And he was placed—I don't recall what the bond was, but he was placed under the bond, but he appealed the case to the superior court.

And on coming up to the superior court, the charges were changed from disorderly conduct and trespassing to assault on a female. He was found guilty of an assault on a female. And he appealed the case to the North Carolina Supreme Court. And he is under a thousand dollar bond.

During the summer I filed a case in the Northampton County Superior Court challenging the validity of the State legislation of North Carolina. And January 29, I believe it was, we had trial. And I was found living out of the precinct, because my father, who had been a registered voter in the Seaboard precinct since 1932, had moved from one location to another in 1935, I believe it was, and it was across the road.

And my brother, James H. Faison, Jr., was registered on the same day that I was registered in the Seaboard precinct. Johnny Jordan, who lives down the road on the same side of the road that I live on, was registered in 1932 in the Seaboard precinct. But in the case they argued that the precinct lines and the township lines were the same—not on the ground of maps or documents saying that the precinct lines and the township lines were the same, but on the grounds of hearsay.

They presented four witnesses who testified that they had always heard that the precinct lines and the township lines were the same. Yet, my father had been recognized in the Seaboard precinct since we moved to this location in 1935.

The court also found that I could read and write, but not to the satisfaction of the registrar, Mrs. Taylor. And the case is now pending in the North Carolina State Supreme Court.

As a result of my attempt to register on that day—on December 27 I wrote a check to a local filling station in town. I had a banking account with the Mechanics & Farmers Bank in Durham. This bank had two check forms, a regular checking form and a check or service form. And the check or service form, you buy the blank checks in advance, and you aren't charged for service. But on the regular

checking account, you pick up a checkbook and you are charged—the charge is taken out of your account for the service.

Well, this check that I wrote—I had a checking service form—but I was aware of the two types of forms at that time. But on May 12, this check that I wrote on December 27 was marked "unsufficient funds." I haven't the statement with me, I left it at the house, but I have a certified statement from the Mechanics & Farmers Bank at Durham that I had money enough in the bank to cover this check.

The check, by the way, was for $2.80. From December 27 to May 17, when I got the statement from the bank——

Senator ERVIN. The check was turned down, wasn't it?

Mr. FAISON. The check was returned, not for insufficient funds, but for incorrect form, that is my stipulation.

Senator ERVIN. You certainly don't blame the registrar of the precinct for the action of the Durham bank in turning down the check?

Mr. FAISON. This is a form of economic sanction, I am trying to say, which is being put on those who attempt to utilize or to protect those rights that are supposed to be guaranteed to all citizens of the United States.

Senator ERVIN. Go ahead.

Mr. FAISON. Also, my father had a small note with the local bank——

Mr. BLUE. Excuse me. You never finished your statement about the check. What happened with the check?

Mr. FAISON. Oh, as a result of the check a warrant was taken out to pick me up on that Saturday night, which was May 12. But instead of the arresting officer going to my place of residence to locate me, he was merely roaming the streets trying to catch the car or pick me up at random where I wouldn't be able to take care of the check.

I don't know if this was to——

Senator ERVIN. There is a certain amount of imagination in that, isn't there? You don't know what the motives were on the inside of the arresting officer's mind, do you?

Mr. FAISON. I know that if I had a warrant to arrest any person, the place I would look for him would be at the residence and not up and down the road looking for cars. And my father and mother were home all day long, yet, the arresting officer never went to my house, he can never say that.

Mr. YOUNG. What happened after that?

Mr. FAISON. After that I went uptown, and I was at some friend's house, and I had a telephone call that the officers or several carloads of people, were looking for me, and I didn't know why, because as far as I knew, this check had gone through, it hadn't been returned, and I hadn't done anything, as far as I knew.

So at that point I merely got in a car for Virginia, I crossed the State line.

After this, my brother, James H. Faison, and some friends, went downtown about midnight, or possibly after, and they picked up the check—the check cost $12.30 to get back, I believe, it was settled out of court.

But on the following Monday I found that I had sufficient funds in the bank to cover this.

Now, how this check got stamped "insufficient funds," I don't know. The mere fact is that the check is stamped "insufficient funds."

Now, from the check deal to a small note that my father had at the local bank, the Farmers Bank of Seaboard, I believe the name of it is—the note was due the latter part of August or the first of September, I don't recall exactly—he had presented himself approximately 2 weeks before expiration of the note to have the note renewed.

After presenting himself to the officials of the bank, they told him to check back about a week later, and they would let him know.

And so we later went back, and there was still no answer. So we checked back in a couple of days, and there was still no answer.

So, finally, about 2 days, 2 or 3 days, before the date of expiration of the note he was informed that the bank couldn't carry the note any longer. And at that point he had to transfer his business elsewhere.

Now, I don't know if this was a form of economic pressure or whether it was merely the deficiency of the funds of the bank, or what not, but I only know that these facts do exist.

And I know the fact that there are many other people, North Carolinians, in that area who have been deprived of the right to vote and who are afraid to speak out because of certain pressures that are being put on them as a result of——

Senator ERVIN. You are going into the heads of other people now.

Mr. FAISON. I know that at the time I appeared there were three turned down at the same time. And we have to accept the mere fact that we should exhaust the lower courts. But we are of the mass, and every person that is denied the right to vote can't put in a lawsuit and fight that case up to get an individual to vote. But this has to be done in a manner so that everyone will be given the opportunity, and not a specific case of each individual, but let one individual take a case up and decide on it, and all the people fall in that category, because we would exhaust the treasury of North Carolina if we tried to take every registration case up to the Supreme Court.

Mr. BLUE. Mr. Alexander has been pursuing this at a great personal sacrifice.

Senator ERVIN. I think he has drawn some rather peculiar conclusions. I have had banks to make me pay my notes when they fell due.

What was the size of your father's note?

Mr. FAISON. I think six or seven hundred dollars—eight hundred at the most.

Mr. YOUNG. Was it a secured note?

Mr. FAISON. It was on a piece of property—I think a 2-acre lot and house, the value of which is possibly six or seven thousand dollars, possibly more; it is a 6-room bungalow.

Senator ERVIN. How long has your father had this note at the bank?

Mr. FAISON. I don't recall how long he has had the note at the bank.

Senator ERVIN. Well, was it for several years?

Mr. FAISON. It had been a period of time—I don't know how many years. But at the time he presented himself to renew the note he had planned to pay some on the note and to pay the interest also.

Senator ERVIN. As far as you know, this note of your father's at this bank had been there for several years?

Mr. FAISON. It had been there for 2 or 3 years, I know.

Senator ERVIN. For all you know, the bank examiner may have told the bank they had to collect it.

Mr. FAISON. I realize that that is a fact.

Senator ERVIN. Did they call him to collect his note?

Mr. FAISON. The note was due the 1st of August or the last of September 1956.

Senator ERVIN. And your father went to another bank and got the money?

Mr. FAISON. Yes, he did.

Senator ERVIN. What was the other bank?

Mr. FAISON. The Mechanics & Farmers Bank in Durham.

Senator ERVIN. Is that a bank that has a colored board of directors?

Mr. FAISON. Yes, it has.

Senator ERVIN. Now, you implied or suggested that that was the bank you had your money in; isn't that right?

Mr. FAISON. That is right.

Senator IRVIN. And how far is it to Seaboard to Durham?

Mr. FAISON. It is 110 miles.

Senator ERVIN. 110 miles?

Mr. FAISON. That is right.

Senator ERVIN. And you gave a check which you drew on the Mechanics & Farmers Bank of Durham which is a bank that is operated entirely—it has a board of directors all of whom are colored men, and it has employees, cashier, all of whom are colored men, doesn't it?

Mr. FAISON. Maybe I didn't make this clear that I gave the check in Seaboard to a local service station and this check was processed through the bank in Seaboard. I can't argue the fact—when I presented myself to the head of the board in the Durham bank he stated the fact to me, he said, "this check is stamped insufficient funds, but as far as my bank is concerned I don't have any reason for stamping it insufficient funds. The only reason I would have to stamp this check would be for incorrect form."

Senator ERVIN. Anyway, here is what you did. You went to a filling station in Seaboard and you gave them a check drawn on the Durham bank for $2.50?

Mr. FAISON. Yes—$2.80.

Senator ERVIN. $2.80. And then the Durham bank turned down the check and stamped it "insufficient funds" on account of the fact that you had drawn it on the wrong check?

Mr. FAISON. Well, the point that—I am not arguing——

Senator ERVIN. I am just asking you some questions about the facts. Isn't that a fact?

Mr. FAISON. Will you state that again?

Senator ERVIN. The bank in Durham refused to honor the check and stamped it "insufficient funds," didn't it?

Mr. FAISON. I don't know if the bank in Durham did it or not. It was processed through the Seaboard bank also.

Senator ERVIN. Do you mean to insinuate that you think that some other bank would stamp it "insufficient funds"?

Mr. FAISON. If it appeared that I am insinuating, then that is what it is, but I don't know what bank might have stamped the check, it is possible it could have been laying around and it was stamped.

Senator ERVIN. You went to the Durham bank, didn't you?

Mr. FAISON. Yes; I went to the bank.

Senator ERVIN. And you talked to the officials of it.

Mr. FAISON. Yes, I did.

Senator ERVIN. And the officials of the bank said that you had used the wrong kind of check?

Mr. FAISON. Used the wrong form.

Senator ERVIN. That is right. And they told you that they had failed to honor your check when it was presented to the bank in Durham because you had drawn it on the wrong form?

Mr. FAISON. He said that the check should have been stamped "incorrect form" not "insufficient funds." The check was stamped "insufficient funds."

Senator ERVIN. In other words, he told you that the Durham bank had put the wrong stamp on it?

Mr. FAISON. No, he didn't say that. He said, "I don't know if my bank stamped this check or not, but if it did it was a mistake, my bank doesn't have any reason for stamping this check 'insufficient'. The only reason my bank has for stamping this check is incorrect form."

Mr. BLUE. Senator, may I make an observation. It is the juxtaposition of the offense that is involved that is significant. Here is a check that was 6 months old, which is the basis for an arrest, when there is a long history of pretty good business dealings with the person who held the check 6 months, until this registration.

Senator ERVIN. Here is the trouble. I know as a lawyer with many years of experience, and as member of a board of directors of a bank, that no bank ever makes a stamp on a check as to whether there is sufficient funds or not sufficient funds except the bank on which it is drawn. And so I know as a practical matter that this stamp was put on at the Durham bank, that is the only bank that would have any occasion to do it.

Now we see an example of the inevitable fruit of all this propaganda of discrimination. This is a fantastic conclusion that he draws from this. He gives——

In October, was it?

Mr. FAISON. December 27, 1955.

Senator ERVIN. Let's see. October 1956 was when you applied for registration?

Mr. FAISON. No; I made the check December 27, 1955, and May 12——

Senator ERVIN. On May 12, 1956, you applied for registration?

Mr. FAISON. That is right.

Senator ERVIN. And the registration was denied?

Mr. FAISON. That is right.

Senator ERVIN. Then in December 1956 you issued a check——

Mr. FAISON. I beg your pardon, that was December 1955, 6 months before appearing for registration.

Senator ERVIN. December 1955. And then in May 1956——

Mr. FAISON. May 12, 1956.

Senator ERVIN. I am talking about your check now.

Mr. FAISON. That is right. That is when the warrant was issued to pick me up.

Senator ERVIN. Anyway, in December 1955 you issued a check on a Durham bank?

Mr. FAISON. That is right.

Senator ERVIN. Which the Durham bank did not pay?

Mr. FAISON. That is right.

Senator ERVIN. Then in May 1956 you were arrested for issuing a check that was not honored?

Mr. FAISON. I was not apprehended, the case was settled out of court by my brother.

Senator ERVIN. You were not apprehended?

Mr. FAISON. That is right.

Senator ERVIN. What date was the warrant issued?

Mr. FAISON. It was issued May 12, after I had appeared for registration.

Senator ERVIN. And the check was issued on the affidavit of the man who operated the filling station?

Mr. FAISON. Yes.

Senator ERVIN. And you settled the check out of court?

Mr. FAISON. My brother settled it out of court.

Senator ERVIN. Now you blame—certainly the Durham bank did not turn down your check on May 12, did it?

Mr. FAISON. The check evidently was turned down between——.

Senator ERVIN. It was turned down some time before May 12, 1956?

Mr. FAISON. It doesn't usually take a check 6 months to be processed.

Senator ERVIN. Therefore, there was no connection—you don't even in your imagination connect the turning down of your check by the Durham bank with your subsequent failure to be registered?

Mr. FAISON. I am not arguing about the check being turned down. The fact that I am arguing is that after I had appeared for registration this person who had known me for a period of time, had known my father, issued a warrant for me——

Mr. YOUNG. The filling station operator?

Mr. FAISON. The filling station operator. He issued a warrant for me for $2.80. My father had been living there for a period of time, for the last 25 years.

Mr. YOUNG. That has nothing to do with the bank or the registration.

Mr. FAISON. I am not arguing about the bank or the registration.

Mr. YOUNG. That is an individual who took it upon himself to suddenly do something he shouldn't have done.

Mr. FAISON. That is right. By a check being stamped "insufficient funds" he had the legal right to collect the money. And that was his only legal means. But the point I am trying to point out is that he showed no faith or good will by issuing a warrant for $2.80.

Senator ERVIN. Did you get a bank statement back?

Mr. FAISON. I got a bank statement in February.

Senator ERVIN. Anyway, it showed your check had not been honored?

Mr. FAISON. I had not been notified that my check had been honored, if I write a check to a person, I don't know whether he is holding the check or he has cashed it.

Senator ERVIN. That is not the question. Whenever you get your bank statement, don't you check up to see how many of your checks——

Mr. FAISON. I was aware when I got my statement back in February that the check hadn't gone back to the filling station.

Senator ERVIN. So why did you think that the filling station had to notify you and there was no obligation on your part to notify the filling station?

Mr. FAISON. He could have held it in his files for at least 2 or 3 weeks before he cashed it, and it might have taken the check 2 or 3 weeks to be processed, and it might have been in the process.

Senator ERVIN. You had knowledge of the fact when you got your bank statement that your check had not been paid, but you feel there was no obligation on you about that, but the obligation was on the other man?

Mr. FAISON. I will put it like this: If I were to write you a check and the check bounced, would you directly pick out a warrant, or would you contact me because the check was bad? If you had known me for a period of time?

Senator ERVIN. I will tell you what I would do. If anybody takes my check and keeps it for 3 or 4 months, I write and tell him to please present it. Do you do that?

Mr. FAISON. I got a statement the 1st of February. The next statement was in July, after I had been apprehended, and the check had been settled.

Senator ERVIN. You do know there is a law in North Carolina which makes it a crime for a person to write a check where there are not sufficient funds in the bank?

Mr. FAISON. There were sufficient funds.

Senator ERVIN. You saw the check, didn't you?

Mr. FAISON. Yes.

Senator ERVIN. And it was stamped "insufficient funds"?

Mr. FAISON. That is right.

Senator ERVIN. And that stamp having been made by the Durham bank, does that indicate that the Durham bank was trying to discriminate against you?

Mr. FAISON. If you request it, I have the certified statement from the cashier of the Durham bank in my room, and I will present it this afternoon, from December 27 to May 17.

Senator ERVIN. I don't care about that. But I am saying that the Durham bank is the one who stamped this "insufficient funds." And the bank had told you that that was a mistake?

Mr. FAISON. He said if his bank stamped it, it was a mistake.

Mr. SLAYMAN. Where is this check now?

Mr. FAISON. I have all of it in my room. I am living with Mr. Blue. I have the check and the certified statements.

Senator ERVIN. Anyway, your father had been registered and voted for many years?

Mr. FAISON. That is right.

Senator ERVIN. How many years had he been voting, to your knowledge?

Mr. FAISON. To my knowledge, as long as I can remember—I am 25 years old—and he told me that he registered to vote for the first time in 1932 when President Roosevelt took office.

Senator ERVIN. Nobody had ever interfered with his voting, had they?

Mr. FAISON. No.

Senator ERVIN. Now, you say that this lady, Mrs. Taylor—what was her name?

Mr. FAISON. Mrs. Helen Taylor. I don't remember her middle initial.

Senator ERVIN. Anyway, she was conducting this registration in a store building that belonged to her?

Mr. FAISON. That is right, her husband.

Senator ERVIN. And Mrs. Taylor testified, did she not, that this lawyer assaulted her, or threatened to assault her?

Mr. FAISON. She testified that he talked with her—she didn't testify that he threatened her—he threatened her with a lawsuit, but not by force—he testified that he talked to her.

Senator ERVIN. Anyway, you said that a Mrs. Garrison——

Mr. FAISON. Mrs. Maggie Garrison—she was a midwife, and her license was suspended for 90 days—why, I don't know.

Senator ERVIN. I am glad that you don't know that, because I think that you know as much about that as you do about these other things. With all due respect to you, I think that you imagine a lot of things.

Mr. FAISON. I am only stating the facts.

Mr. BLUE. In closing this argument I would like to make a point here, that here is a man who has had 4 years of military service, volunteered, who comes home to North Carolina, goes down to register, and is rejected, in his first year of college, as not being competent in reading and interpreting the Constitution. And in that very process we have illustrated an instance of how the franchise and the right to register is denied. We have here a test which is arbitrarily given, arbitrarily interpreted, and the courts have since upheld her rejection on the ground that it was not to her satisfaction—and no standard of satisfaction is specified in the process.

Further, that out of this case——

Senator ERVIN. This is testimony I regret to hear from anybody. The witness states that he gave his check on a Durham bank to a man operating a filling station in Seaboard, which is 110 miles distant from Durham; that the Durham bank stamped the check "insufficient funds" and declined to honor it; and that the witness subsequently paid court costs and the check because a warrant was issued by a court in Seaboard at the instance of the operator of the filling station. It is a tragic thing for the witness to be brought here to testify that the check was not paid on presentation by the Durham bank and that the warrant was sued out by the filling station operator by way of economic discrimination on account of the race or color of the witness. The witness bases his deductions upon the theory that there was a conspiracy between the filling station man and the bank 110 miles away—a bank that is run by highly reputable colored citizens of North Carolina who wouldn't have entered into such a conspiracy.

Mr. FAISON. I think you are more or less misconstruing the idea—I am not trying to stipulate the idea that there was a conspiracy between the two. I will admit the fact that this check was stamped "insufficient funds." If it was a mistake, that is O. K.; if it was not, it was O. K. But the fact I am stating is that there was not good faith in the presenting of this after I had attempted registration on May 12, after the check had been written for a period of approximately 6 months.

Mr. SLAYMAN. How much did your brother have to settle this for?

Mr. FAISON. $12.30.

Mr. SLAYMAN. What were those; court costs?

Senator ERVIN. Yes. We have a law in North Carolina making it a crime to issue a check where there are insufficient funds to cover it.

Mr. SLAYMAN. Does he plead guilty?

Senator ERVIN. Evidently he already did.

Mr. FAISON. At the time, with the arresting officer there was a group——

Senator ERVIN. I have known many people to be arrested for issuing checks under this law. I wouldn't have a man arrested for $2.80, but there are a lot of people who will.

Let's get to other things. You went up to register, and you were denied registration?

Mr. FAISON. That is right.

Senator ERVIN. And Mrs. Garrison was denied registration?

Mr. FAISON. She was denied priority at the time I appeared.

Senator ERVIN. Did she register later?

Mr. FAISON. I don't know.

Senator ERVIN. Did you report this to the NAACP?

Mr. FAISON. No.

Senator ERVIN. You didn't report it to the field representative of the NAACP?

Mr. FAISON. On May 12, approximately 2 hours later, I retained a lawyer, and I went back for registration. The following week I gave a statement of this case to the NAACP, the following week—I believe it was the following Friday. And that is all.

Senator ERVIN. Well, you did take that step.

Now, you say that Lawyer Walker was later tried for disorderly conduct before the local court?

Mr. FAISON. Yes; the recorder's court.

Senator ERVIN. The recorder's court of Northampton County. And he was convicted by that court?

Mr. FAISON. Yes.

Senator ERVIN. In that court one man sits as a judge and jury; isn't that right?

Mr. FAISON. I don't recall.

Senator ERVIN. Were you there at the time?

Mr. FAISON. I was, at the time.

Senator ERVIN. Do you know whether the case was tried in that court before a jury or just before a judge?

Mr. FAISON. I don't believe there was a jury; I am not sure.

Senator ERVIN. But anyway, he was convicted there, and then he appealed to the superior court of Northampton County. He was tried there before a jury; wasn't he?

Mr. FAISON. The charges were changed between the two courts, from disorderly conduct and trespassing to assault on a female, in the superior court, and he was convicted of the assault on a female.

Senator ERVIN. Convicted by a jury?

Mr. FAISON. Yes.

Senator ERVIN. And your case came on trial. Was it tried before a jury; your suit in the superior court?

Mr. FAISON. Yes.

Senator ERVIN. And the jury found that you didn't live in the Seaboard precinct?

Mr. FAISON. The jury, by hearsay testimony, found the fact that I didn't live there. But there was no maps, no documents stating where

the precinct line was. The only thing they had were four people to appear who said that they had always heard that the precinct line ended with the township line, that is all. Yet, my father had been voting in the Seaboard precinct since 1935.

Senator ERVIN. Without any question?

Mr. FAISON. My brother was registered on the same day, without any question, in the precinct, plus Johnny Jordan was registered in 1932 without any question of the precinct. The question of precinct came up after I had filed the case challenging the validity of the State law. And in this reply they stated that I had not lived in the precinct for the last 25 years. That is when the question of the precinct came into being.

Senator ERVIN. You also objected to the type of evidence that was presented before you?

Mr. FAISON. The Seaboard precinct line—my house had been recognized as being within that boundary for the last 20 years, and there were no maps—it was just hearsay for someone to get up and say they had always heard that the precinct line ended up the road.

Senator ERVIN. You go to North Carolina College, in Durham?

Mr. FAISON. I do.

Senator ERVIN. You are a sophomore there this year?

Mr. FAISON. Yes; I am.

Senator ERVIN. That is all.

Mr. SLAYMAN. Just one more thing for the record.

Since we had our list of witnesses mimeographed, and we had previously heard from Mr. Blue that Mr. Faison wanted to testify, I hadn't heard whether a schedule had been agreed upon for him. I just want to understand whether this is all right with you.

Senator ERVIN. Yes; I am glad to do it.

Mr. BLUE. I appreciate the chairman giving us this opportunity spontaneously, and I wanted to have you hear Mr. Faison. I did not review the testimony or go over it with him in advance; that is why it rambled as it did, because we thought that you would elicit the facts in the questioning.

Senator ERVIN. I would like Mr. Giles to come around.

STATEMENT OF ROBERT GILES, ASSISTANT ATTORNEY GENERAL, STATE OF NORTH CAROLINA

Senator ERVIN. Your name is Robert Giles?

Mr. GILES. Yes, sir.

Senator ERVIN. You are assistant attorney general of North Carolina?

Mr. GILES. Yes, sir.

Mr. ERVIN. Do you know anything about any of these cases that this boy has been talking about?

Mr. GILES. I know only about the voting registration case, Senator, which was tried in the Northampton superior court. The attorney general, as you know, under North Carolina law, is notified if a statute is alleged to be unconstitutional and he is authorized to appear in court and raise any points that he may have. And Judge Patton had assigned me to this case, and asked me to be at this trial. And I was there and assisted the country attorney, Mr. Riddle, in the defense of the suit.

The registrar, the defendant in the case, had two main defenses: (1) That the plaintiff, the one that just testified, was not a resident of Seaboard precinct; and (2) that the plaintiff had not passed the reading test when she gave it to him back in May.

Now, on the first point we made it clear, and everybody recognized, that the registrar, when Mr. Faison came in back in May, asked him, did he live in Seaboard precinct and he said, "Yes," and she accepted his word on that. It did not go into details as to where the boundary line was, she simply accepted his word and that, of course, is the ordinary practice, that you go into register and you certify that you are a resident of a precinct. And that is accepted unless somebody raises objection. But it was proper in January when the matter was tried for the defendant to raise all legal objections which were available and one of course was, registered in the precinct. And the evidence was uncontroverted that the precinct boundary line of the Seaboard precinct coincided with the boundary line of the township. And it is true that the plaintiff did not put on maps, there were no maps, and all of that. And many of the precinct boundaries in our State are established by traditional reputation and we do not have maps. And all of the evidence that was presented at the trial showed conclusively that they had always considered that the precinct boundary line of Seaboard was the same as the township boundary line.

The plaintiff testified that his father had been registered in that precinct for many years, and it was also brought out that his father, when he first registered in that precinct had lived at a different place, nearly within the middle of the precinct. And then, of course, when he moved out, as quite often happens, no question was raised about his residence. And his brother came in, as I understand on the same morning, he was asked if he resided in Seaboard precinct, and he answered the registrar "Yes," and he was registered on that basis. The witness here brings out the fact that these other people, members of his family, were registered in that Seaboard precinct.

But I wish simply to make for the record the point that no one had ever raised the question with them, no one had challenged them on that.

Now, that went to the jury, Senator, and on that jury there were three colored citizens, one of whom I understand afterward—there was no challenge made to the jury panel—one of the colored citizens was the president of the local NAACP chapter, and the jury found on the evidence that the boundary line of the Seaboard precinct was what has been testified to, and that the plaintiff was not a resident of Seaboard precinct.

Now, on the matter of his reading test before the registrar, she testified that he missed several words, and she pointed them out at the trial. And the registrar's theory—it is something that can be proved but it was her theory that she expressed at the trial, and it was one of the defenses, that plaintiff had come in and deliberately misread these words and had refused to give proper definitions and so on. And that was her theory. And we urged at that trial that it simply didn't make sense, that a man who was in the first year in college, had been through high school, couldnt' have read that section of the constitution.

Now, that was one of the defenses we urged at the trial. The plaintiff on the witness stand denied that. The plaintiff did admit that he didn't read various words there in that section the same as was read at the trial. And we read the words at the trial and said, "Well, now,

this is a correct pronunciation of the way they are usually pronounced, and you say you didn't read them that way?"

And he said that was his recollection but he did read them correctly.

Now, I do know this, Senator, that in my opinion the colored citizens there, the two Negro attorneys, were anxious to get a test case on the North Carolina statute and on our constitutional provision. Now it is my opinion that they got this case here, and their main objective was to get a test case more so than to try out the individual rights of the citizen, and they just made the mistake of getting somebody who turned out not to be a resident of the precinct.

Senator ERVIN. You say there were three members of the colored race on the jury?

Mr. GILES. Yes, sir.

Senator ERVIN. I will ask you if the law of the State of North Carolina does not require a verdict to be unanimous?

Mr. GILES. That is right.

Senator ERVIN. And the verdict was that he was not a resident?

Mr. GILES. That is right.

Senator ERVIN. I will ask you if it is not a matter of custom in North Carolina when persons present themselves to vote that the only thing that the election officials do is ascertain that they are registered?

Mr. GILES. That is right.

Senator ERVIN. They don't ask about changes of residence or things like that?

Mr. GILES. That is right.

Senator ERVIN. I believe in North Carolina the requisites of voting are these: First, that persons shall be 21 years of age; second, that they should be capable of reading and writing a section of the State constitution; and third, that they must not have been convicted of a felony—that is, they must not have been convicted of a felony unless they have had their rights of citizenship restored in the manner provided by law; fourth, that they shall be residents of the State for for 1 year at the time they present themselves for registration; and fifth, they shall be residents of the precincts in which they seek to register for—is it 4 months?

Mr. GILES. Four months, sir, resident in the precinct.

Senator ERVIN. And I believe that is the sum total of North Carolina's qualifications. We have no poll tax prerequisite to voting.

Mr. GILES. Senator, I would just like to add this: In my opinion, on the basis of my personal participation in that trial, the witness who just testified here got a complete and fair trial at that place. He gave his story on the stand, and the registrar told hers, and the jury answered the issue of residence against him, the jury answered that the plaintiff had not read to the satisfaction of the registrar, but did answer another issue which the judge had submitted—I don't think it was pertinent, but the judge made most of his rulings against the defendant in that case—that the plaintiff could read and write. And my argument to the jury was, well, I think he can read and write, too, he is bound to if he can go to college. But we looked back to this day back in May and what he did before the registrar. And it seems to me that the verdict of the jury was accurate and was supported by all of the evidence in the case.

Senator ERVIN. Thank you. That is all.

STATEMENT OF CHARLES A. McLEAN, WINSTON-SALEM, N. C., ACCOMPANIED BY CLARENCE MITCHELL

Mr. MITCHELL. I am Clarence Mitchell. I would like to introduce, for the record, Mr. Charles McLean, of Winston-Salem, N. C., who is here to testify on some of his personal observations in connection with the denial of the right to register and vote in North Carolina.

Senator ERVIN. We would be glad to have Brother McLean testify before us. I have known him for some time.

Mr. MCLEAN. Mr. Chairman, I have so many records here that I don't know which one to start with first.

I might say that I was not anticipating appearing today at all, so I am not as well organized as I normally would be. However, since the opportunity presents itself, and it might not be here tomorrow, I must take advantage of it.

As has been said, I am Charles McLean, from North Carolina. I have had considerable experience with various denials of registration in many counties of North Carolina, and in most of the counties from which reports have been made.

Many of them I experienced personally. I was there with the persons. Some of them, of course, were friends and acquaintances of mine who had had experiences that were not pleasant for them, and felt that probably they would have at least some moral support if they had someone with them.

Senator ERVIN. As a matter of fact, didn't you have some duty in that connection as a member of the NAACP?

Mr. MCLEAN. In some cases, I certainly did. But in many cases it was before I was connected with the NAACP. As a matter of fact, the first experience I had was my own, when I came out of college—either when I came out of college or university. I went in my own precinct, which is in Harnett and not Forsyth. I went to register. This was some time ago, in 1936, to be exact. The registrar denied me. He was a very good friend of mine. I don't know whether you are interested in that far back or not.

Senator ERVIN. That is pretty far back.

Mr. MCLEAN. I have had experience where I was not at all connected with NAACP.

Senator ERVIN. During the last year you were field representative of the NAACP in North Carolina?

Mr. MCLEAN. Last year and the year before last.

Senator ERVIN. And it was your function, among other things, to investigate this type of thing?

Mr. MCLEAN. That is very true. I tried to do a good job.

On many cases, we would get the information that persons had been denied the right to register, and many cases I observed it myself. We would make the report to Mr. Britt during the time he was chairman, and since then, to the new chairman. Of course, we have not made as many reports to him as we did to Mr. Britt. I was always directed to Mr. Maxwell, executive secretary of the State board of elections, so much so that I began making most of my reports to Mr. Maxwell. Mr. Maxwell, of course, had done some investigating.

I have a lot of correspondence here from him, some of which probably bears out what we are talking about better than I could, if I would try to present them.

We were talking about Northampton County—that is the county from which the young man (Mr. Faison) who has just finished testifying comes. We had some reports, not only from that precinct, but from many of the precincts in Northampton County. We also have some correspondence from the chairman of that particular board.

Those reports and that correspondence bear out that in some of the cases the registrars admitted that they were not living up to the regulations.

I brought along one of the election law books. I should remind you, because it will probably come up in this discussion, that the law in North Carolina is now 30 days in the precincts and not 4 months as it was sometime ago.

Senator ERVIN. There was a constitutional amendment. We used to have a three-fold requirement, one about residence in the State, one about residence in the county, and then one about residence in the precinct.

Mr. MCLEAN. Probably you are going beyond me, but I do know it is only 30 days.

The law says—this is section 28:

Voters must be able to read and write; exceptions. Every person presenting himself for registration shall be able to read and write any section of the Constitution in the English language, and shall show to the satisfaction of the registrar his ability to read and write any such section when he applies for registration, and before he is registered: *Provided, however,* That no male person who was, on January 1, 1867, or at any time prior thereto, entitled to vote under the laws of any State in the United States where he then resided, and no lineal descendant of such person shall be denied the right to register and vote at any election in the State by reason of his failure to possess the educational qualifications aforesaid; provided, that said elector shall have registered prior to December 1, 1908, in accordance with article 6, section 4, of the Constitution and laws made in pursuance thereto.

The reason I wanted to get that in is because I will bring up some cases——

Senator ERVIN. Part of that is the so-called grandfather clause, which was outlawed by a decision in Oklahoma in 1916, as I recall it.

Mr. MCLEAN. Maybe so, but it is still being used in North Carolina.

And I will, of course, bring up the cases where it is being used in North Carolina, and has been used as recently as this past registration.

Senator ERVIN. We will adjourn for lunch and come back at 2:30.

(Whereupon, at 1:15 p. m., a recess was taken until 2:30 p. m., of the same day.)

AFTERNOON SESSION

Senator ERVIN (presiding). The committee will come to order. You may proceed.

STATEMENT OF CHARLES A. McLEAN, WINSTON-SALEM, N. C., ACCOMPANIED BY CLARENCE MITCHELL, WASHINGTON, D. C.—Resumed

Mr. MCLEAN. Mr. Chairman, I believe we started with Northampton County.

I had complaints made to me about the failure to register, Negroes who were not able to satisfy the registrars in Northampton County. I made a number of investigations in that county and had reported this to Mr. Maxwell.

This letter to Mr. Maxwell from Mr. Beall, who is the chairman, or who was the chairman of the county board of elections at that time, will probably explain what was done.

The letter is from Mr. Beall to Mr. R. C. Maxwell, executive secretary, State Board of Elections, Raleigh, N. C.

I received your letter of the 4th enclosing copies of letters written by the Secretary of the NAACP, dated the 30th.

Since receiving your letter I have made an investigation of the complaints made by the field secretary of the NAACP.

The accusation there was that the registrar would not register them on that day at all, the first day of registration, just refused to register anybody that day. And this is an explanation of why.

I delivered the registration books on April 24. However, when I got the Pleasant Hill precinct I could not find Mr. Crews—

that is the registrar—

I left the books for that precinct with Mr. Marvin Coker. Mr. Crews was confused as to the date on which the registration was to begin, and he felt registration was not to begin until Saturday, May the 5th.

I had a complaint from a number of people who had been there. I have their letter in the file. They had been there to register. They found that the registrar was in bed at home. He was not at the registering place. They went to his home and they inquired of him if they could register.

He said, "No, the day is not registration day," but all of the other precincts were registering.

Of course, the persons who were not permitted to register got the complaint in to me. The registrar's excuse was that he got confused. He didn't know the registration was that day.

In West Roanoke the registrar is Mrs. Spivey. Mr. Beal had this to say about her: "She carefully was examined, as she should be under the law. She had not taken 2 hours to register 1 person."

The complaint was that Mrs. Spivey had taken up to 2 hours to register 1 individual. Consequently, there was only 1 or 2, very few would get to pass before her.

The Seaboard precinct is Mrs. Taylor, but you have heard of Mrs. Taylor, so I will skip that.

In the Jackson precinct, Mr. Fly is the registrar.

Senator ERVIN. I would like to hear about Mrs. Taylor again.

Mr. MCLEAN. Mrs. Taylor did not take 45 minutes. She took long periods of time to register any college students.

Of course, it seems she took from between then to now. She also told me——

Senator ERVIN. Wait a minute. I want to strike out the "between now and then." You are reading and interpolating there. You and myself understand, but when you get it down on here they might not understand it.

Mr. MCLEAN. I see.

He also told me that she had refused to register some high-school graduates, because they could not explain words in the preamble of the Constitution.

We go to the Jackson precinct. The report on Mr. Fly was that he was feeling very good that day, and he had registered persons up to around noon, but by that time he got to feeling so good, he walked out.

He asked the last person trying to register to tell him how many rooms were in the courthouse. The fellow didn't know how many rooms in the courthouse. He didn't register, but he was the last one to go before Mr. Fly that day.

I was not there.

Senator ERVIN. Mr. Fly, you say, got to feeling pretty good. You mean the information was that he had been imbibing a little too much?

Mr. MCLEAN. That was it; yes.

Senator ERVIN. I would assume that a drunk registrar would not have much more sense than any other drunk man.

Mr. MCLEAN. Now, we get to the Gaston precinct where more Negroes were turned down than in any other precinct in Northampton County.

And I should say that Northampton County, you know that county—Northampton County is a county that has the greatest percent of Negro population of any county as against whites, of any county in North Carolina.

I believe it has been reported to be about 70 percent Negro population.

Senator ERVIN. It is below Warren. Warren has 73 percent.

Mr. MCLEAN. Warren—what we call regular Warren is sixty-odd—in the magazine there—you know what magazine, printed out of Raleigh—you take it down there and I do, too—they put Northampton above any county.

I also believe Halifax comes above Warren.

Senator ERVIN. I was going to say Warren is 73 percent.

Mr. MCLEAN. Warren, if it is 73 then, of course——

Senator ERVIN. It was when I had the Spellar case—the colored population was 73 percent. They got a jury in Warren County—the jury was from Warren.

Mr. MCLEAN. That is what I know about that.

In Northampton Mrs. W. A. Vinson is a registrar, and she registered in her home.

You see, all of this has been in Northampton County as the Judge knows. West Gaston precinct is in Northampton. This is a letter concerning this. A public place for the registration of the voters is not available in this precinct and the Negro voters must register in someone's home. Any who register do so in the home of the registrar, Mrs. Vinson.

Mrs. Vinson has been giving applicants for registration an oral and written examination "and I have instructed her to confirm her examinations to require the applicants to read and write the constitution of North Carolina."

This letter is dated in May 1956 and was for the primary election, as you might observe.

At that time, on the first day there she turned—I mean, I saw there about 20 persons and I didn't stay there all day, of course.

But it was reported to me reliably that about 50 people applied for registration that day—were there to be registered that day.

Twenty of them were not permitted to register. And since, of course, it takes some time with them, I do not mean takes 45 minutes or nearly the time, that was about all that could get before her.

Those others were out there waiting. That is one of the methods. And I am sure you recognize that.

Senator ERVIN. About 5 more weeks, though, of registration.

Mr. McLEAN. What did you say?

Senator ERVIN. There were about 5 more weeks of registration.

Mr. McLEAN. There were about 5 more weeks?

Senator ERVIN. Yes, altogether.

Mr. McLEAN. Yes, there were, but after the 5 weeks the applicants still had not passed her. I mean still had not an opportunity to present themselves because that was 50 that day.

But there were 50 more waiting the next day and the next day.

And, of course, during that registration there were only 2 more registration days. That was the first one. And they only have 3 in the primary—that only gave them 2 more.

Senator ERVIN. They can register any day for the primary, from the day the books open to the day they close. Unless they have a terribly big precinct, they will get through pretty easy if they register 20 a day.

Mr. McLEAN. Well, I was thinking that you were aware of the fact that the Negroes cannot register, because they cannot satisfy the registrar on the regular registration days.

And I am sure you are aware that the registrar is not required to register on other days. She may register if she or he desires to.

Senator ERVIN. They are required to attend the polling places on Saturday. But they can be registered any other day.

Mr. McLEAN. As I was about to say, I am sure that if you cannot satisfy the registrar on the regular days then it would be more difficult on the day she is or he is not required to register voters.

The other 4 or 5 days——

Senator ERVIN. You yourself do not know how many of these people could read and write.

Mr. McLEAN. Well, I don't know about them, but I have copies of their handwriting and heard their reading, and can present it to you.

Senator ERVIN. Well, anyway, unfortunately, there are a great many people in North Carolina who cannot read or write.

Mr. McLEAN. That is very unfortunate. But these are persons who can read or write. And, of course, I will show you evidence of some of their reading and writing. Their own exhibits, if need be and will be available to you, I am sure. It is all available to you. I have their names and addresses here.

I might say that that went on for the primary—the entire three Saturdays of the primary registration. During that time I think two people did register—it has been reported to me that they did.

And after getting this letter from Beall we presumed that he did as he said he did. But it had no effect apparently on Mrs. Vinson, because when the October registration began for the general election the results were about approximately the same.

One of the great handicaps was that Mrs. Vinson would tell them, if they tried, say, the first Saturday and failed, they would then be told not to come back any more that primary. They could not try again until November, until the following November election, the general election.

They could not try but once in any time that the books are open, any of those three Saturdays. Of course, the same thing held——

Mr. MITCHELL. I would like to explain this. I had the benefit of hearing the questions that you raised.

We are very anxious to make certain that we give you factual information.

As I understand the significance of this letter, Mr. McLean directed to the proper official in the State of North Carolina information about how people were being denied the right to register.

Apparently this official said as of May 7 that he would undertake to correct it.

But Mr. McLean says that in October, even after the official stated he was going to correct it, the registrar was still doing the same thing complained about.

Senator ERVIN. Did you go back in October?

Mr. MCLEAN. Yes, we did.

Senator ERVIN. My information from the State board of elections is that every time you made a complaint to it, the State board of elections took the matter up with the chairman of the county board of elections in the county where the precinct was, and that the chairman made a report to the State board, and the State board sent you a copy of the report.

Did you make any report to the Northampton County Board of Elections subsequent to the time that you received a copy of that report from the chairman of the Board of Elections of Northamtpon County?

Mr. MCLEAN. This chairman died, Mr. Beall. You probably did not know him. Mr. Beall died. We could make no report.

Senator ERVIN. He had a successor.

Mr. MCLEAN. He had a successor, Mr. Johnson.

Senator ERVIN. That is the point I am making. Did you at any time after the receipt of that letter, the copy of Mr. Beall's letter, did you make any complaint to the State board of elections about Northampton County?

Mr. MCLEAN. I think I did. I would have to look. I have many of those files here.

I do not have them all.

You are correct in that Mr. Maxwell did supply me with the copies of the correspondence.

I'd have to look at them to see if I did or did not. As best I can recall it now, I did not make a report on what Mr. Johnson did not do. As best as I can recall. There are about 20 counties in North Carolina that we are having complaints from and I do not remember what happened in each county.

I suppose that is as much time as we can spend on Northampton County. However, there is much more that could be said about other precincts in the county. I would like to submit for the record an item from the Greensboro, N. C., Daily News of February 26, 1957, regarding a suit filed by another resident of the county.

(The article referred to is as follows:)

[Greensboro Daily News, February 26, 1957]

SUIT CHARGES VOTING RIGHTS WERE DENIED

RALEIGH, February 25.—A Negro woman who claims her voting rights were violated last May filed a suit in United States Eastern District Court today against a Northampton County registrar.

Louise Lassiter asked that a permanent injunction be issued restraining elections officials from using a so-called literacy test in determining voting qualifications at Seaboard precinct.

She charged also that both the North Carolina constitution and the North Carolina general statutes were unconstitutional in giving a registrar the right to judge a person's literacy.

DEFENDANT NAMED

The suit named Helen H. Taylor of Seaboard precinct as defendant. The alleged violation occurred last May 5, the plaintiff says.

According to the charges, the plaintiff and "25 or more other qualified" voters were denied registration on the voting books by the defendant.

A Northamption County resident for more than 37 years, the plaintiff said she was given "a purported literacy test." She was told to read a printed copy of the constitution of North Carolina. When she finished, she was informed that she could not register because she "mispronounced several words," the action stated.

The so-called literacy test is a treatment extended to "applicants of the plaintiff's race," the suit charges.

HITS STATUTES

It particularly hit North Carolina General Statutes 163-28, which says, "every person representing himself for registration should be able to read and write * * * to the satisfaction of the registrar. * * *"

It also is directed against article VI, section 4 of the North Carolina constitution.

The suit alleges that both the constitution and the statutes "conflict with the privileges or immunities clause of the 14th amendment" of the United States Constitution.

It further charges that the constitution and statutes conflict with the 15th and 17th amendments because the literacy test itself is arbitrary and "capricious."

There is no appeal to a North Carolina governing body from a registrar's decision on the literacy of a voting applicant, it was pointed out in the action.

The suit asked for speedy action and an injunction from a three-judge district court.

The story runs approximately the same thing. That is all I can say, there appears to be a conspiracy that the Negroes just will not be permitted to register there.

Now we will talk about Greene County, if I may, sir.

Greene County, of course, as you know, is not one heavily——

Senator ERVIN. Do you have any records showing any Negroes denied the right to register in Northampton other than the precincts where Mrs. Vinson was?

Mr. MCLEAN. Do I have any?

Senator ERVIN. Yes.

Mr. MCLEAN. I just mentioned one up at another precinct. I will get back to the letter. Pleasant Hill precinct.

Senator ERVIN. How many?

Mr. MCLEAN. I don't know how many were there that Saturday. There were quite a few of them there. Of course the registrar was not registering anybody. We went to Mr. Maxwell.

A delegation from the county went, accompanying me to Mr. Maxwell and some of the delegates were from that precinct.

We went down one Saturday, probably you will remember, a delegation representing several precincts in that, I think there were five of them, to talk to Mr. Maxwell about the situation.

I believe that—well, that was it.

Senator ERVIN. When did Beall die, do you recall?

Mr. MCLEAN. I do not recall when Mr. Beall died but he died sometime after the primary. Mr. Johnson was appointed in his place.

I knew Mr. Beall personally. This is just 1956 what I am talking about now.

This has been going on with me since 1952. Mr. Beall, of course, did try to do some things—I believe he did—but Mr. Beall had about the same success as Mr. Maxwell would have—people just don't go back.

Senator ERVIN. You quit complaining though that year after the primary?

Mr. MCLEAN. What did you say?

Senator ERVIN. You made no complaint about Northampton County after the primary, so far as you can remember?

Mr. MCLEAN. At this time—yes, but that isn't true after the primary in 1952. We complained. In the general election in 1953 also.

Mr. MITCHELL. There is another point in that connection. There is a list of persons whose affidavits have been submitted to the United States Department of Justice, and among those people are some from Northampton County.

So what Mr. McLean has indicated is that when he failed to get satisfaction through the State machinery, these complaints were then submitted to the Federal Government for redress.

Mr. MCLEAN. Here is another. I speak about this because it is a little different. In West Roanoke Township, Mrs. Spivey—that is the registrar—she required approximately 2 hours each. That does not mean she registers them after she requires that, but she requires that to examine them.

And, of course, they may or may not pass.

This is told to me. I did not hear this. She advised them to tell others—she told one of the persons, David Moses, to tell others how hard it was to register under her.

Greene County is another one of the counties we have had a lot of difficulty with. In one township precinct we spent the most time in trying to get something done. There are some precincts in Greene County that are not as bad, by far.

Mr. Alton Newborn—and he is the registrar in the Bullhead precinct—Mr. Newborn has a series of questions that he asks everybody, gives them an examination. Among the questions listed here are up to 22, I believe. Some of them are, of course, the normal questions—what party affiliated with—what is your occupation—name of the county agent—name of county official for the register of deeds. That is for the register of deeds in the primary.

Then he wants them to name the candidates for other various offices—board of education, county commissioners—these are listed—county treasurer, county justice of the peace.

One of the questions he asked, what candidate from Lindale—that is a county down there—or a precinct—what district is Lindale in? What congressional district do you live in? And name the county, the district in which this county is in. That was Greene County, of course.

If the NAACP attacks the Government"—another one was—"Would you support the Government or the NAACP?" And sometimes the other question that has been asked is this, "If NAACP attacked the Government on which side would you be on?"

And here is another question—here is a novel question: "When is the primary election and when is the general election?"

He gives an examination. This is a copy of some of the questions that he asks.

That county has been under investigation. Of course, we have not been able to get the type of response that I think any of us would be proud of.

And the next one would be——

Senator ERVIN. Anyway, you reported that action of the registrar in Bullhead Township in Greene County to the State board of elections, and the State board reported it to the chairman of the county board of elections. And the chairman of the Greene County Board of Elections made a report of his investigation there, aand a copy of that report was sent to you.

And thereafter you made no complaint further about that county.

Mr. MCLEAN. Oh, yes. We complained about Greene County. We have complained about Greene County, because they have been—that has been very bad.

Senator ERVIN. When did you make your other complaint about Greene County?

Mr. MCLEAN. I talked with Mr. Maxwell about it. I went up to see him, during the registration for the general election.

Mr. MITCHELL. That also is among the complaints submitted to the Department of Justice, the one on Greene County.

Senator ERVIN. That was testified about.

Mr. MITCHELL. The complainant is Thomas Yelverton.

Senator ERVIN. Proceed.

Mr. MCLEAN. The next is Currituck County. I was in the first day of registration for the primary. I went into the courthouse, the registration was going on in one of the rooms of the courthouse.

There were 2 or 3 colored persons there who presented themselves for registration. And the registrar said to them after, that they misspelled some words; they did not satisfy her.

The record shows that I made myself known to the registrar at that time. And, of course, said who I was.

That was after they had been turned down. The applicants were not there. I mean the persons that were turned down were not in the room at the time as best I remember it.

The next day, probably late that afternoon, others did go in. And, of course, I am not sure if any registered at Currituck or not. I mean in Currituck County. This was Currituck County courthouse precinct, I presume. That was the registration place.

The registrar there is Mrs. McMillan. One person who presented himself was Riley Lee Mackey. I have here a sample of his handwriting.

Mackey is a college graduate. He was among those that were denied the right to register. He graduated from State teachers college.

Seantor ERVIN. Did you see Mackey write this?

Mr. MCLEAN. Yes. I saw Riley Lee Mackey write that. He wrote that along with another writing.

Senator ERVIN. The reason I ask is that it is surprising because it looks like a woman's handwriting. I presume Riley Lee Mackey is a man by his name.

Mr. MCLEAN. Yes; he is a man—a good-sized man, too. He is pretty good sized.

I believe Mackey says on this, or he says on one that he had spent some time, I forgot how much time he spent there, in college

Senator ERVIN. In this case he was able to register?

Mr. MCLEAN. What did you say?

Senator ERVIN. Was he able to register?

Mr. MCLEAN. He was not able to register in time, according to my last report from him, for the general election. I am not saying he is not registered now.

Senator ERVIN. I am not, either. I mean I misinterpreted the question. I was talking about whether he was able to find the registrar.

Mr. MCLEAN. It is not that. They are able to find the registrar. It is not often now that they are not able to find the registrars. You will find a few cases where registrars hide when they see persons coming. But you do not find that too often now.

Senator ERVIN. I imagine that is based on hearsay?

Mr. MCLEAN. No. I have been into registration places with them and registrars were not there. As a matter of fact, that was one that Mr. Beall and I discussed.

Senator ERVIN. All you know is that they were not there. You don't know that they were hiding.

Mr. MCLEAN. I do not know that they were hiding but they were not present.

Mr. MITCHELL. In that connection, Mr. Chairman, Mr. McLean does have a clipping which reveals how a registrar locked the door. This is something of his personal knowledge.

Senator ERVIN. When was that given? When was that given?

Mr. MCLEAN. I believe this was in May 1956. I believe this was in May 1956—either in May or in November.

This is a letter that referred to that coming from a person down there; Rev. Jasper Moore had been turned down two times.

Mr. Riley Lee Mackey, veteran of the United States Navy for 12 years—I didn't know it was that long—graduated from the State teachers college with a B. S. degree. That is, this one attended State teachers college.

In all we had 15 persons who were not permitted to register.

These two persons said they would come in and testify, if necessary. That is, this Mackey and Rev. Jasper Moore. I have that all here.

Then we move over to Camden County, which is the adjoining county to Currituck. Mrs. Pearl Godfrey is the registrar. That is the registrar at the primary, in the primary in 1956.

She registered, I believe it was in the sheriff's office or in an office near the sheriff's office behind the courthouse at Camden County Courthouse.

And, of course, she would give a written examination. She asked applicants to write sections of the Constitution, which was according to law. She would dictate the sections that she wished them to write.

On one occasion that I was there, she had before her two high-school graduates, one Mrs. Vivian Jones, and one Mrs. Esther Spellman. She dictated to these two high-school graduates and they did the writing for her, but when they had finished, she said that they did not satisfy her and they were out.

And they walked out. And I, of course, walked out, too.

In that particular registration place there are a number of persons that did not register that day. Jeremiah Watson, who is a disabled veteran, shot three times in the Battle of the Bulge.

Another, Odell Traften, who is also a veteran. Another, Milford Trafton. And a Mrs. Mary Gregory.

They were asked to read the preamble, according to my notes. And, of course, they did not satisfy the registrar at that time.

And I don't know if they have been registered since or not.

In Shiloh Township——

Senator ERVIN. Is that Shiloh?

Mr. MCLEAN. Shiloh.

Senator ERVIN. A good old Bible name.

Mr. MCLEAN. A Mrs. Mary Jane Mercer misspelled words in her dictation. Mrs. Mercer appeared to be a fairly good student. I don't know what her—what high school or college training she had, how much.

She read, certainly, I would think fair, if not good. She was told after completing her reading that she did not satisfy and was asked to read the second time.

She became nervous and she did not read as well. And it was confirmed that she did not satisfy the registrar. And she was not permitted to register.

Then I go to Hertford County. I am afraid Hertford County can't go on the record because the person in Hertford County has never agreed to let her name be used and that was the understanding. Probably you saw the newspaper stories of it.

I would not name her because she said she was afraid that they might do something to her if they found she would give her name, that she was denied registration.

I do have samples of her handwriting and of her reading and I do have her name.

I think that would be for investigation.

In Tyrrell County we had a number of persons denied registration. I did not see any of them as they went to register. I have a copy of their handwriting—of five of them.

I have talked with some of them since. There is a copy of their handwriting, if you care to see that.

Senator ERVIN. Let us see about Tyrrell County. How many people can you name that were not registered in Tyrrell County?

Mr. MCLEAN. Let's see that. I can go back to that. How many wished to register and did not register?

Senator ERVIN. Yes.

Mr. MCLEAN. There is 1, 2, 3, 4, 5, 6 that went to register in the primary, and were not registered. Whether or not they were registered in the general election, I could not say.

Senator ERVIN. That is all. Thank you.

Mr. MCLEAN. Now we move into Warren County.

Warren County has a long record of permitting only a few Negroes to register. Here is probably the best evidence. And in this case I have two because——

Senator ERVIN. I do not know the record in Warren County on that. I do know that it was disclosed to the Court in the Speller case that they had colored people serving on the jury as far back as they could remember in Warren County.

That was one reason that Judge Parker ordered a jury from Warren County. He knew from his experience as a superior court judge that colored men were accustomed to serve on the juries in Warren County.

Mr. McLEAN. That is true, no doubt.

In Warren County here are some questionnaires as they have been filled in by the persons who went to register and were denied.

One of them says here that the answer was—that he was not permitted to register because "I did not give him (the registrar) satisfaction." In this case the registrar was Mr. W. R. Strickland. That is the registrar.

Mr. MITCHELL. Would it be all right if we give the names of these people for the record?

Senator ERVIN. Yes.

Mr. MITCHELL. Identify the names of the complainants so they will be in the record.

Mr. McLEAN. This one was—this complainant is George R. Kearaney.

Senator ERVIN. Kearaney.

Mr. McLEAN. Yes, all right, Kearaney.

He has finished the ninth grade in John R. Hawkins School and was called to the Army. He had 3½ years in training in the Army. He was not permitted to register.

Mr. MITCHELL. Give the name.

Mr. McLEAN. That is the only name of that. Just the one.

Here is the other one. The registrar in this case is Mr. John Powell. The complainant is George Ed Newall. In this document he says he is a senior in college at A. and T., Greensboro, N. C. That is at the present time, I presume.

These have been forwarded to me this year, 1957. Some of these questionnaires have already been presented. These have not. Therefore, I have the two copies. But they will be.

Senator ERVIN. Both of those were in 1957?

Mr. McLEAN. I mean they were presented to me in 1957. They tried to register, were denied, as I understand it, in the past fall before the general election, because there has been no registration in 1957.

Senator ERVIN. I knew that. What you mean is that those reports were not made to you until 1957.

Mr. McLEAN. They did not reach my hands until 1957, yes; because they have to ask for this material. If they ask for it and want to make the report, we cooperate with them. They asked for it in December.

I want to mention this, and this I cannot—I cannot document. I have the letter. The Senator knows about it. From Brunswick County. And the interesting thing there was the registrar admitted that only Negroes were asked to take a literacy test, that all others registered upon the strength of the grandfather clause. And I mention that because we have had something to say about the grandfather clause today.

Senator ERVIN. A registrar usually is a white man.

Mr. McLEAN. Yes; no doubt about that at all.

Senator ERVIN. He knows the white people in his precinct; does he not?

Mr. McLEAN. I would presume that he would.

Senator ERVIN. He is more likely to know them than he is to know the colored people.

Mr. MCLEAN. I would not think so, more likely.

Senator ERVIN. You do not think so?

Mr. MCLEAN. We know practically everyone down there.

Senator ERVIN. He is more likely to know whether a white person can read or write than a colored person; would he not?

Mr. MCLEAN. I wouldn't think so; not the people throughout his county. He would not know about some.

Senator ERVIN. You think he would know as much about the colored people in his precinct as white people?

Mr. MCLEAN. I said some colored people and some white people.

Senator ERVIN. I would think that the average registrar in a rural precinct would have a pretty good idea whether a white person presenting himself or herself for registration could read and write.

Mr. MCLEAN. I can't tell.

Senator ERVIN. You were a registrar in Winston-Salem?

Mr. MCLEAN. Yes.

Senator ERVIN. You have an election official in Winston-Salem?

Mr. MCLEAN. I have been a registrar.

Senator ERVIN. Of your precinct there——

Mr. MCLEAN. Of my precinct; I have registered in my precinct. I was deputized. I served in many capacities there.

Senator ERVIN. Have you ever been, officially, a registrar?

Mr. MCLEAN. No; I have never been, officially.

Senator ERVIN. But you have acted as deputy registrar?

Mr. MCLEAN. Yes.

Senator ERVIN. And you think that a white registrar would be as well acquainted with the reading and writing capacity of a colored man or woman in his precinct as he would with the reading and writing capacity of a white man or white woman?

Mr. MCLEAN. I can only go by my experience, and that is I could not tell whether they could read and write. I had to give all of them the same examination. That is all I can say. And I did; everyone.

Senator ERVIN. Well, I would think personally, from knowing conditions in North Carolina, that normally the white registrar would have a better opportunity to know the white people presenting themselves for registration than he would the colored. I do not say that is necessarily so in all cases, but I would say that that would be an inference that I would draw from my knowledge of the State. I do not guarantee that, but that is my opinion.

If I were a registrar myself, I would not bother to examine a person whom I knew could read and write, regardless of whether he was a white or colored person, because I would be satisfied in advance of his capacity to meet the literacy test.

Mr. MCLEAN. I want to mention Franklin County. I have witnesses to this case. That is the case that came up some time ago. I read about where the man was denied registration because he was left handed.

Senator ERVIN. Yes. I was very much amused about that. On the day after the statement concerning that matter appeared in the press, I talked by phone to Mr. James E. Malone, Jr., a highly reputable attorney in Louisburg. Mr. Malone advised me that Mr. Wynn, the registrar who was alleged to have denied the man the right to register

and vote because he was left handed, said there was no foundation for the statement and that, as a matter of fact, the party in question was actually registered and permitted to vote.

Mr. McLEAN. Yes. That is true—he was later registered and permitted to vote, but he was denied at first.

Mr. MITCHELL. I would like to ask a question, if I may. Was he permitted to register and vote after you had called this to the attention of the registrar; and did they have a change of heart?

Mr. McLEAN. I took all of this to Mr. Maxwell.

Senator ERVIN. Who was the party?

Mr. McLEAN. The name of it——

Senator ERVIN. The name of the voter that claimed that he was denied the right to vote in the precinct in Franklin County because he was left handed?

Mr. McLEAN. I do not have that with me because I did not, as I said—I did not come—was not anticipating today to testify. I have got it, and it is in my bag which is still in the parcel locker at the station. I can certainly get it to you, the name and address, et cetera.

Senator ERVIN. You do not have personal knowledge about it?

Mr. McLEAN. No, no; it is only reported to me. People who were with him at the time that verified that it was a fact. I have their names, also.

I had an experience down in Bertie County, the instance that was mentioned there when the courthouse was locked. That was, of course, back in 1952. That is what I am talking about; the primary in 1952.

The chairman of the board—I can't remember that name; I don't seem to see it in the record right now—he was on the staff of the bank across the street there.

I went there and found the courthouse door locked. I went to the chairman because I had talked with him earlier. He was certainly nice to talk to, and offered all kinds of cooperation. Then he said, "That courthouse door is never locked at this time of day." That was about noon. "That courthouse is never locked. The people go in and out there. That courthouse can't be locked."

I insisted that it was locked. Of course, he hardly thought it could be. He agreed to go over and see. The bank had closed for the day. So he came out of the bank and went over there. He tried to open the door and probably, if you remember about it, that courthouse has two doors—a little vestibule on either side.

He went to one on the left and tried to open that door. He said, "The other can't be closed."

When he tried that door, it was closed. Of course, he was excited, too. He shook the door real hard and there came Mr. Perry—he was the registrar, peeping around from behind a wall partition. He had apparently heard the disturbance, the shaking of the courthouse door.

The registrar was locked up in there. The reason, I presume, was he didn't want any Negroes to come and register.

Senator ERVIN. You draw that inference. It might be possible that he was taking a drink and he didn't want anybody to disturb him while he was taking a drink.

Mr. McLEAN. I don't know—does he drink?

Senator ERVIN. I don't know. But there are a lot of people, you know, in North Carolina that do and Bertie County corn used to have a reputation of being a pretty good brand.

Mr. McLEAN. I don't drink. I don't know that.

Of course, Mr. Perry, the banker, insisted that the registrar open the courthouse door. And he did.

Of course, the persons who were denied registration did not register because they had gone by that time.

That is the thing that is fantastic. If I had not been able to persuade Mr. Perry to go over there, he just could not have believed that it could happen.

Senator ERVIN. You draw one conclusion. I submit that if I were a judge trying a suit based on your allegation, I would have difficulty ruling in your favor because there are so many other inferences.

He might have been talking to a lady friend or somebody.

Mr. McLEAN. Of course, here is probably one of the things that I think has the greatest weight in this law, as you have it. It is about a case out in Zebulon, Wake County, N. C. This is in 1952.

I will have to read this clipping from the newspaper. It is from the Raleigh News Observer. This is dated October the 30.

For three Negroes trying hard to vote the answer was still "no" today.

Senator ERVIN. What year is that?

Mr. McLEAN. This is 1952. I am sure it is 1952.

Mr. MITCHELL. I think it might help if we indicate that the reason these statements are being made about 1952 is that over an extended period, we have been making an effort to get redress under the State machinery.

For example, there is a letter from the attorney general of North Carolina which would substantiate the fact that efforts have been made to get corrections, but that the problem still persists.

Senator ERVIN. In Wake County, though, you have got one of the largest voting colored populations in the State.

Mr. McLEAN. You mean?

Senator ERVIN. You have got precincts in there where there are thousands of Negro voters.

Mr. McLEAN. Yes: that is true in Raleigh. But Wake County outside of Raleigh is different.

Senator ERVIN. I think you have got one precinct that has got 4 or 5 thousand votes.

Mr. McLEAN. That is my precinct, largest of any precinct in North Carolina. That is my precinct. I was chairman up there.

I am reading this:

For three Negroes trying hard to vote the answer was still "no" today.

The answer came for the second time in a week, to Otha Holden, W. Walter Holden, and Edward Holden. It came at Zebulon's City Hall in the late afternoon, and in somewhat tense surround'ngs.

This time three Negroes were told they could not register for next Tuesday's election after taking the test in reading and writing of the State constitution. Last Saturday the three complained that they had been refused even the right to take examination.

Because of their protests the chairman and a member of the Wake County Board of Elections, came to Zebulon this afternoon. Chairman James C. Little, Jr., and Republican Member Willis Briggs, were here. Little had said earlier to see that the Negroes got a "proper examination" and if they could pass that proper examination, Little had said they would be registered.

While a deputy sheriff and a constable looked on the three Holdens took that examination from the registrar, Mrs. I. D. Gill. When the tests were over Mrs. Gill delivered the verdict. All three were disqualified.

And Chairman Little had to admit later that there was little the board of elections could do about the refusal.

"I got a little lesson in election law today," Little told newsmen that the lesson was that a registrar is the sole judge of the person's fitness, educational or otherwise to cast the ballot in North Carolina.

The general statutes say that a person seeking to register shall be able to read, write, and understand the State constitution to the satisfaction of the registrar.

Senator ERVIN. That is a mistake right there, because it does not say that. It says, "shall be able to read and write any section of the constitution," in the English language. It does not confine it to the satisfaction of the registrar at all, because dispite the newspaper, and interview with Mr. Little there, the person would have a right to appeal to the county board of elections and thence to the State board.

Mr. MCLEAN. The last statement was:

The State supreme court has said that the final judgment is up to the registrar unless it can be shown that he has acted arbitrarily.

Senator ERVIN. And to deny a person that can read and write the right to register would be acting arbitrarily. That is one trouble. Much misinformation gets out. People read newspaper statements like that. Even the Attorney General of the United States said that a North Carolinian has to read and write to the satisfaction of the registrar in order to register. That is not our constitution at all. An elector has to be able to read and write a section of the North Carolina constitution in the English language.

Mr. MCLEAN. We have got some here—I read something like that this morning.

Back at that time——

Senator ERVIN. You read it correctly this morning.

Mr. MCLEAN. Yes, this morning.

Senator ERVIN. It was this afternoon. We had to adjourn for lunch.

Mr. MCLEAN. As Mr. Mitchell has said, we have been working on this for a long time. In 1952 I wrote the Attorney General about it, and complained to him. This is the reply:

DEAR MR. MCLEAN: I received your letter of October 27, enclosing to me several newspaper clippings, copies of telegrams, copies of letters to Mr. Britt, chairman of the North Carolina State Board of Elections on the subject of refusing to register Negro State citizens who are thought by you to be qualified to vote.

You state that Mr. Britt has tried to correct the prevailing conditions by insisting that the registrars abide by North Carolina law, but he failed.

I have just talked on the telephone with Mr. Maxwell.

Mr. Maxwell is the executive——

Senator ERVIN. The executive secretary of the board.

Mr. MCLEAN (continuing):

who read to me a copy of the letter which you had been reading, which had been written by Mr. Britt to the chairman of the county board of elections, and some of the counties to which you referred and in these letters Mr. Britt requested the county chairmen to look into the matter, and to use their position to see that all qualified persons who had applied for registration within a period of registration were permitted to register.

Mr. Maxwell also read to me a copy of the letter which he had written.

He goes on to say how he was working to bring a change about in the situation. I am particularly interested in presenting that because it shows you the long period of time that we have been working to try to get corrections.

Of course, you also see we had little success as shown by reports that we have had today. There have been reported to Justice Department, the list of these documents that I have presented here this afternoon signed by the protesting persons in many counties.

Mr. MITCHELL. I have read that statement given to the Justice Department. The specific thing it says is there are 20-odd complainants from 8 counties. All of them have submitted affidavits to the Department of Justice alleging that they were deprived of the right to vote.

Mr. MCLEAN. That is not all we could have gotten.

Senator ERVIN. As a matter of fact, in North Carolina communities, you have pretty alert local organizations of the NAACP, do you not?

Mr. MCLEAN. Well, I should think so, in communities where they are, they are not everywhere you know.

Senator ERVIN. And I believe that I am right in that it has been one of the programs of the NAACP in North Carolina to try and get colored citizens to register to vote, has it not?

Mr. MCLEAN. That is correct.

Senator ERVIN. And down there you have in the State organization what you might call a field representative?

Mr. MCLEAN. That is right.

Senator ERVIN. To investigate these matters.

Mr. MCLEAN. That is right.

Senator ERVIN. And when you have received any complaints you have conducted an investigation?

Mr. MCLEAN. That is right.

Senator ERVIN. And in each instance, where you have found that conditions existed that you felt ought not to exist, you have been diligent, have you not, to call those conditions to the attention of the State board of elections?

Mr. MCLEAN. We certainly have.

Senator ERVIN. And I will ask you if in every instance where you have called the attention of the State board of elections to conditions of that kind, the State board of elections has taken up the matter, is that not correct?

Mr. MCLEAN. As far as I know, every one.

Senator ERVIN. And in every instance the State board of elections has transmitted to you a report from the chairman of the county boards of election reporting on the action that the chairman claims he has taken in the matter?

Mr. MCLEAN. I believe that to be true.

Senator ERVIN. That is the case in the specific ones that you have called to the attention of the State board of election. You have called each one of the cases to their attention that you testified about here?

Mr. MCLEAN. Oh, yes; yes, sir.

Senator ERVIN. And in every case Mr. Maxwell as executive secretary of the State board of elections has called the complaints to the attention of the chairmen of the boards of elections in the respective counties?

Mr. MCLEAN. I believe that is true.

Senator ERVIN. And in each instance he has transmitted a report to you, has he not?

Mr. MCLEAN. I believe that is so.

Senator ERVIN. And in most of these instances you have made no further complaints after you received from Mr. Maxwell the reports from the chairmen of the county boards of election?

Mr. MCLEAN. I have complaints that were made in the 1952 election. The same kind of complaints were made in the next election in 1956, and the reports are continuing. In fact, we will continue to report them or hope we will until something is done about it. We called Mr. Maxwell's attention to it and he has been very kind. The last time we had a talk, he and I both agreed that Mr. Maxwell has done all that he could but he has been outvoted—I mean he has not had too much success and sometimes we feel, why continue? I mean, there isn't much that we can do under the State machinery.

Senator ERVIN. Well, I understood you to say that in a number of instances that some of these parties that had been denied registration had been registered and voted?

Mr. MCLEAN. Oh, sure, I said that——

Senator ERVIN. As a matter of fact all of these counties that you called to the attention of the committee are rural counties, are they not?

Mr. MCLEAN. Well, they are rural counties. Of course, I could talk about Hyde County but I did not bring it in——

Senator ERVIN. At any rate they are rural counties?

Mr. MCLEAN. They are rural counties.

Senator ERVIN. How many members of your race are registered and vote?

Mr. MCLEAN. In Winston-Salem we have approximately, just according to the records we have there, and they are pretty good, about 14,000.

Senator ERVIN. And as a matter of fact I believe that Kenneth Williams, is that his name, has been serving on the municipal board?

Mr. MCLEAN. Well, it has been a long time since he has been there but there is a colored man there now, yes, the Reverend William Crawford.

Senator ERVIN. And it is my own understanding that in Greensboro in Guilford County you have thousands and thousands of Negroes who registered and voted?

Mr. MCLEAN. I believe that is true. I don't know much about Guilford County.

Senator ERVIN. And I will ask you if you don't know that Durham County—that there not only the members of your race have been permitted for years and years to register and vote, but I believe one of them is a member of the council in Durham?

Mr. MCLEAN. Yes.

Senator ERVIN. And, by the way, I am very proud of the colored people in Durham. We have one of the largest insurance companies operated by colored people in the world in Durham County, so I have always understood.

Mr. MCLEAN. I believe that is true.

Senator ERVIN. And I am proud of the fact that one of the founders of the company, a colored man by the name of John Avery, came from my county.

Mr. MCLEAN. Is that right?

Senator ERVIN. And also, as was brought out this morning, we have a bank establishment operated by a colored board of directors and we

have a very fine college in Durham, North Carolina College, as well as a fine college in Greensboro.

Mr. MITCHELL. I would like to say, respectfully, that in North Carolina, and I visit this State a great deal, there does seem to be as much difference as night and day when one looks at the situation in the urban areas as contrasted with that so-called black belt area.

I have been in the black belt area and I have talked with the people. I think I know what some of their problems are. I would say that the enlightenment which has permitted the election of colored city councilmen in some of these areas, and the building of a very fine bank and institutions, such as you have expressed, has not penetrated to that black belt area. I doubt very much that it will penetrate into that area until the people who are living there are able to vote freely and to be released from these conditions which prevent them from casting a ballot. That is why it is such a serious problem.

Senator ERVIN. And all of this came about without any coercive power of the law——

Mr. MITCHELL. Unhappily, there is a long, long history of how it came about and of the efforts on the part of the citizens. They had to finance these efforts themselves in order to get to that place where you can be proud of them. We are glad that you are proud of them, but they got there because of their own efforts and often by expensive litigation.

Mr. MCLEAN. He is talking about Wilkes County and in that section and Davidson County over there with Lexington and——

Senator ERVIN. Well, frankly, I served on the superior court bench in North Carolina for about 7 years, lacking about 11 days; and on the State supreme court for about 6 years and 3 months or something like that and I never was confronted with those cases.

Mr. MITCHELL. Those were Federal cases.

Mr. MCLEAN. As a matter of fact, Senator, when I went to Winston-Salem, as I say, when I went to my home county, they did not permit me to register there. When I went to Winston-Salem in 1935, they turned down—probably you know Dr. Bianchi, who was there in that college, he was turned down, and it is just comparatively recently. I was thinking as you get down into these places where we are talking about, that is where you come into these things. In the places that you are talking about, now, the Negro population is comparatively small where you have a Negro population not over 25 percent. If that same atmosphere were to prevail where you have the Negroes in the proportion of where they represent 73 or 71 percent, I say, as in Northampton, and I am reminding you——

Senator ERVIN. There is one thing that you overlook in your figures and that is that in the counties you have in mind, is where you have the greatest amount of illiteracy.

Mr. MCLEAN. Well, it is not one sided, there is illiteracy, but not all Negro and——

Senator ERVIN. And another thing you have got the most poverty.

I have discovered, for example, that there are 48,000 North Carolina farmers who have a cotton-acreage allotment of less than 4 acres. I think that we render them a substantial service by getting them more acreage allotments, and that is what I fight for.

Mr. McLEAN. Well, I trust that you are also going to try to get them this opportunity to try to vote—I mean, you have not said you would, you have not mentioned it.

Senator ERVIN. Well, I have never attempted to deprive anybody of his right to vote and I have always preached that any citizen who is qualified to vote should be permitted to vote.

Mr. McLEAN. There are 32,000 Negroes in Halifax County. The biggest voting place there is Weldon, and yet, here is the record and this record is as of 1952 and this comes from the chairman at that time, and he is enumerating what the Negroes there have done about being registered and we find this:

In Scotland Neck there are 60; in Enfield, 58; in Palmyra, 10; in Weldon, 39; and in Littleton, 26; and then he gives the percentage of the registrations and he gives us these figures:

For Enfield, 61.7 percent; Weldon, 66.6 percent; and Littleton, 60.5 percent—so, they have not got anybody registered there, and yet, in this county there are 32,000 Negroes.

Senator ERVIN. What date was that?

Mr. McLEAN. 1952. And that is based on the census of 1950.

Senator ERVIN. Well, talking about figures, a lot of people pluck things out of the air. In North Carolina, we have a lot of white people who do not register and vote. We have, I would say, about 800,000 white people who do not bother to vote. Likewise, there are a great many of the colored people who are not concerned about voting. A great many of both races do not care whether they vote or not.

So, I do not think that our population figures necessarily mean as much as they are sometimes said to mean in this connection.

Mr. McLEAN. Well, there are many more Negroes who would vote, especially in the Black Belt, if they were not in some way intimidated. Now, I do not mean that they fear bodily harm. In fact, I know of only one person, and this happened to be a woman, who was afraid to give her name for fear that she would be harmed physically.

But there are many ways to make it hard for them to qualify and sometimes they cannot qualify. One is by keeping a person waiting and testing him, maybe an hour or maybe 2 hours. In my area you can go and register any day, and the registrar is glad to serve you. But that is not true in many other areas of the State.

Senator ERVIN. Another thing that militates against heavy voting is the fact that we have one predominant political party. There are no contests in many counties, and folks are not going to be so much concerned about voting when there is only one party ticket in a county. Is there anything further?

Mr. McLEAN. No.

Mr. MITCHELL. I would like to thank you Senator, for your patience in hearing us and giving us this opportunity.

Senator ERVIN. Well, I am glad to do it. I did not want to inconvenience the witnesses and make them stay over until tomorrow if they could get away today.

Mr. McLEAN. That is very kind and we certainly appreciate that.

Senator ERVIN. Off the record.

(Discussion off the record.)

Senator ERVIN. We will insert in the record a letter signed by R. C. Maxwell, executive secretary of the State board of elections of North Carolina dated February 18, 1957.

Also, an affidavit of Raymond Maxwell, executive secretary of the State board of elections with reference to Snow Hill and Bull Head precincts in Greene County, N. C.

Also, an affidavit from Raymond Maxwell, with reference to the registrar at the Court House precinct in Camden County, N. C., calling attention to the corrective efforts taken by the chairman of the county board of elections.

Also, an affidavit from Raymond Maxwell concerning the Bolivia precinct in Brunswick County, N. C., in which reference is made to the grandfather clause.

Those will all be included in the record.

(The documents referred to are as follows:)

STATE BOARD OF ELECTIONS,
Raleigh, N. C., February 18, 1957.

Senator SAM J. ERVIN, Jr.
United States Senate, Washington, D. C.

DEAR SENATOR ERVIN: I received your letter today dated February 14 relative to the statements made by Attorney General Brownell before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, and you sent me a copy of the quoted statements of Mr. Brownell relating to certain acts on the part of the registrars in Brunswick County, Camden County, and Greene County, N. C. You asked me to obtain such information as I could in reference to these incidents mentioned from the election officials in these counties in the form of affidavits and to forward these affidavits to you for use in the current hearing on the so-called civil rights bills.

After reading the enclosed written statements of Mr. Brownell on these counties, I recalled that charges concerning these incidents occurred in the registration period just preceding the primary election held on the last Saturday in May of 1956. I further recalled that these exact complaints were made to me as executive secretary of the State board of elections at that time by Mr. Charles A. McLean, field secretary for the NAACP, Winston-Salem, N. C., and that I sent copies of the statements of Mr. McLean concerning these incidents to the chairman of the county board of elections in each of the three counties involved, with a request that the chairman investigate the charges with the registrar or registrars involved and make a written report to me as soon as possible on said charges. I have in my file a copy of the report of the investigation and reports made to me by the chairmen of these three counties and since all of the information you require is already available in my office, I thought perhaps it would better serve your purpose to have affidavits from me setting forth the facts concerning these charges in these three counties, which you may feel at liberty to use in connection with this hearing before your subcommittee.

The charges contained in the testimony of Attorney General Brownell in the three mentioned counties in this State were properly investigated and corrected where correction was needed so that no further complaint arose in those three counties during the remainder of 1956, in which a special general election and a regular general election were held and the registration books were open for both elections. I found that it was true that some of the registrars in Greene County had a questionnaire with a list of questions which they asked Negro applicants in order to qualify them for registration, and that some of these registrars did use the questionnaire on several Negro registrants. Upon investigation by the chairman of the county board of elections of Greene County the registrars stated that they did not know that they were violating the law in using such questionnaire, but upon being told that it was a violation of the law the chairman of the county board of elections reported that the use of the questionnaire was discontinued immediately and thereafter all applicants were given the same kind of qualifying test for registration.

If I can be of any further help to you please let me know.

With highest regards and best wishes, I am,

Yours very truly,

R. C. MAXWELL, *Executive Secretary.*

AFFIDAVIT OF R. C. MAXWELL, EXECUTIVE SECRETARY OF THE STATE BOARD OF ELECTIONS REGARDING CHARGES BY MR. CHARLES A. MCLEAN, FIELD SECRETARY, NAACP, AGAINST REGISTRARS OF SNOW HILL AND BULL HEAD PRECINCTS IN GREENE COUNTY, N. C.

To Whom It May Concern:

I, R. C. Maxwell, executive secretary of the State Board of Elections of North Carolina, hereby certify that on May 5, 1956, I received a letter from Mr. Charles A. McLean, field secretary, NAACP, concerning the failure of registrars in Bull Head precinct and Snow Hill precinct to register Negro applicants unless they could answer a list of 20 questions, which questions related to candidates running for office in the county as well as to whether they would support the NAACP should that organization attack the United States Government, and that white applicants for registration were not required to answer any of such questions, which complaints by Mr. McLean in his letter to me of May 4 read as follows:

"It has been reported to me that in Greene County, at the registering place in Bull Head precinct of which Mr. Alton Newborn is registrar, Negroes are not only required to read and write, but are required to take a written examination containing many questions some of which are as follows; name the congressional district, name the counties in the district, name the candidates for various offices to be voted upon at the election. If the NAACP would rise against our present Government, which side would you be on?"

On the same day that I received the letter from Mr. McLean concerning these charges against Greene County, I sent a copy of Mr. Charles A. McLean's letter to Mr. James H. Potter, chairman of the Greene County Board of Elections at Snow Hill, N. C., requesting said chairman to investigate these complaints with the registrars involved and give me a written report on same as soon as he could possibly do so.

I further certify that by letter dated May 10, 1956, said chairman, Mr. James H. Potter, of the Greene County Board of Elections, wrote to me concerning said charges as follows:

"MR. R. C. MAXWELL,
"*Secretary, State Board of Elections,*
"*Raleigh, N. C.*

"DEAR MR. MAXWELL: This is with reference to your letter of the 7th, regarding the registration of Negroes in one of the townships in this county. I have investigated the complaint made by Charles A. McLean, of the NAACP, and found that Mr. A. B. Newborn, registrar of Bull Head Township, has been very strict in the registration of both white and colored. I have discussed the matter at length with him however and do not think there will be any further complaints from anyone who meets the requirements for registration. Mr. Newborn has been registrar for a number of years and is very conscientious in carrying out his duties. Please let me hear from you if there is any further information desired in this matter.

"Yours very truly,

"JAMES H. POTTER,
"*Chairman, Greene County Board of Elections.*"

I sent a copy of this report immediately to Mr. Charles A. McLean, field secretary of the NAACP, Winston-Salem, N. C.

I hereby further certify that after receiving the above-quoted letter from the chairman of the Greene County Board of Elections I called him over the telephone to find out if it was true that the registrar in the precinct mentioned in his county did have a list of questions which were asked colored applicants for registration, which questions were similar to the ones above mentioned. I was informed by said Greene County chairman that he had found out from his investigation that some of the registrars in the county did have a list of questions to ask Negro applicants, which questions were similar to the ones above quoted in the letter of Mr. McLean, but that he as chairman of the county board of elections had instructed all of his registrars that the use of such a list of questions to ask applicants for registration, regardless of race or color, was illegal and would not be tolerated and that the registrars using the questions informed him that they did not know they were acting contrary to the law in using such questions and that the practice would be stopped immediately.

I was informed that the practice was stopped immediately upon the orders of the chairman of the county board of elections, and I further certify that I received no further complaints from this source of this nature for the remaining period prior to the primary of May 26, 1956, and the general election of 1956.

R. C. MAXWELL, *Affiant.*

STATE OF NORTH CAROLINA,
Wake County:

Sworn and certified to before me this 18th day of February 1957.

[SEAL] MARY M. MCCORD, *Notary Public.*

My commission expires January 30, 1958.

Affidavit of R. C. Maxwell, executive secretary of the State board of elections, regarding charges against registrar at Court House precinct in Camden County, N. C., that said registrar gave a reading and writing test to Negro applicants for registration but did not require such test for white applicants

To Whom It May Concern:

I, R. C. Maxwell, executive secretary, State Board of Elections of North Carolina, do hereby certify, that on May 4, 1956, I received a letter from Mr. Charles A. McLean, field secretary for the NAACP, concerning the actions of the registrar at the Court House precinct in Camden County, N, C., which complaint of Mr. McLean reads as follows:

"At the courthouse in Camden County, I saw the registrar, Mrs. Godfrey, turn down several people after they had attempted to take dictation given by her at a speed much too fast. Among those turned down were disabled World War II veterans who said they had voted when in service, they expressed much bitterness and disgust, and among others turned down were local high school graduates."

I further certify that on the same day I received the above complaint from Mr. McLean I sent a copy of same to Mr. W. J. Burgess, chairman of the Camden County Board of Elections, with the request that he investigate these complaints with the registrar of the court house township precinct and give me a written report on same as soon as he could do so; that on May 8, 1956, Mr. W. J. Burgess, chairman of the Camden County Board of Elections, wrote to me a report regarding such complaints in the court house township precinct, which report reads as follows:

STATE BOARD OF ELECTION,
Raleigh, N. C.

DEAR SIRS: We have investigated the working of the registrars in regard to the complaint of the agents of the NAACP and as far as I can see there is no reason for any just reason for complaint, each one of registrars has registered several Negros. I advised each of the registrars to put all on the register that passed, giving each one the benefit of any doubt. I received the precinct return forms and all of the other forms for returns. I am sure that they are O. K.

Yours truly,

W. J. BURGESS,
Chairman, Board of Election, Camden County.

I further certify that I sent this report of the chairman of the Camden County Board of Elections to Mr. Charles A. McLean and that I received no further complaints concerning the registration of Negroes in Camden County during the 1956 primary and general election.

R. C. MAXWELL, *Affiant.*

STATE OF NORTH CAROLINA,
Wake County:

Sworn and certified to before me this 18th day of February, 1957.

[SEAL] MARY M. MCCORD, *Notary Public.*

My commission expires January 30, 1958.

Affidavit of R. C. Maxwell, executive secretary of the State Board of Elections, State of North Carolina, relating to charges by Charles A. McLean, field secretary of National Association for Advancement of Colored People, against the registrar of Bolivia precinct in Brunswick County, N. C., for his practice as registrar "to qualify Negroes under the educational test and to register whites under the grandfather clause."

I, R. C. Maxwell, do hereby certify that I am executive secretary of the State Board of Elections of North Carolina, and that on May 23, 1956, I received a letter from Mr. Charles A. McLean, field secretary for the NAACP, in which Mr. McLean enclosed a letter from one Herbert J. Bryant addressed to Mr. Charles A. McLean on May 12, 1956, which letter is as follows:

Mr. CHARLES A. MCLEAN,
1459 Hattie Avenue,
Winston-Salem, N. C.

DEAR MR. MCLEAN: I am writing to call your attention to a situation that we have in our county. E. O. Rabon, registrar in Bolivia precinct acknowledge to me today in the presence of two witnesses that the educational test is reserved for colored only.

This acknowledgment was occasioned by the fact that 2 white ladies came into the polling place today at least 5 minutes after I and 2 colored ladies had presented themselves for registration, and were registered and gone before the 2 colored ladies could complete writing their respective sections of the State constitution.

After they were registered I asked him if the educational test was reserved for colored only. He said "Yes."

He further explained that there were only two sections under which applicants were registered * * * One was educational test for colored and the other was the grandfather clause for white.

I have in my possession a letter from Mr. Raymond Maxwell in which he explained that the law applies alike to colored as well as white; and that this information had been sent to all county chairmen.

I am writing for your advice concerning the discrimination that is being practiced in this precinct by this particular registrar. I have the names of the 2 white ladies aforementioned also the 2 colored witnesses to his acknowledged discrimination.

May I hear from you at your earliest possible convenience.

Yours very truly,

HERBERT J. BRYANT.

I further certify that on May 23, 1956, I sent the original of said letter of Herbert J. Bryant, along with 2 other letters sent to me by Mr. McLean, to Mr. Arthur Dosher, chairman of the Brunswick County Board of Elections, asking Mr. Dosher to investigate immediately the charges made by Herbert J. Bryant and others on the failure of the registrar of Bolivia precinct to register said Herbert Bryant and 2 others, and to report back to me immediately the result of his investigation of said charges; that on May 29, 1956, the said Arthur Dosher, chairman of the Brunswick County Board of Elections, wrote a letter to this affiant as executive secretary of the State board of elections enclosing a report of his investigation of the charges against the registrar of Bolivia precinct concerning the failure of the registrar to register the colored applicant, Herbert J. Bryant, and two others, which report by the Brunswick County Election Board chairman is as follows:

"Statement to Arthur J. Dosher, chairman and members of the Brunswick County Election Board by Mr. E. O. Rabon, Bolivia precinct:

"On Thursday, May 10, 1956, James Allen Johnson came to my office and he wanted to register to vote, and I selected a section of the Constitution for him to read and write, and when he wrote the first time he wrote a part of the section I gave him and a part of another, and had it all tangled up. I went back and showed him the first section and asked him to write it again. When he wrote that time he wrote 15 words that he could not pronounce. This section contained about five lines, the boy seemed somewhat excited and I told him that Saturday would be the last day for registration and if he would meet me at Bolivia precinct on Saturday that I would give him another chance. He did not appear.

"I told Herbert Bryant (who was registered on the books before) that the only way that I know that people could register is under the grandfather clause and the educational law.

"I registered other people during the time I was holding this conversation with Herbert Bryant. I will not register anyone who cannot come up to the standards under the law.

"Mr. E. O. Rabon,
"*Registrar, Bolivia Precinct, Brunswick County, N. C.*"

I further certify that on June 7, 1956, I sent copies of the report of the chairman of the Brunswick County Board of Elections in regard to complaints of the refusal of registrars in that county to register Negroes, including the Bolivia precinct registrar, to Mr. Charles A. McLean, field secretary of the NAACP, at Winston-Salem, and I never received any further complaint from him concerning these particular cases in Brunswick County.

I also further certify that on May 25, 1956, I received from Mr. S. B. Frink, attorney at law of Southport, N. C., who is county attorney for Brunswick County, N. C., a copy of a letter written by him as county attorney to Mr. Arthur Dosher, Southport, N. C., chairman of the Brunswick County Board of Elections, advising that he, Mr. S. B. Frink, had received the letters which I wrote to Mr. Dosher as county election chairman concerning these cases, which letter of Mr. S. B. Frink advised Mr. Dosher to instruct the registrars in the precincts mentioned in the letters to me, namely; Bolivia and Supply precincts, to allow these persons refused registration to vote in the forthcoming primary of May 26, 1956, and to hold said ballots in abeyance in sealed envelopes pending my decision concerning same, and I quote below the said letter from Mr. S. B. Frink to Mr. Arthur J. Dosher, chairman of the Brunswick County Board of Elections, concerning this matter:

"Mr. Arthur J. Dosher,
"*Southport, N. C.*

"Dear Sir: I have read the letters received by you from Mr. Maxwell, executive secretary, State board of elections, and in our opinion, as county attorneys, you should instruct the poll holders in the precincts mentioned in the letters to Mr. Maxwell, namely Supply and Bolivia, to allow these persons refused registration to vote in the forthcoming primary of May 26 and hold said ballots in abeyance in sealed envelopes pending decision from Mr. Maxwell's office. I would suggest that you notify these persons to present themselves at the polls on May 26 for the purposes aforesaid.

"Very truly yours,

"Frink & Herring,
"*County Attorneys.*"

I hereby further certify that no further complaints were made to me concerning these particular cases in Brunswick County in either the primary or general election of 1956.

R. C. Maxwell, *Affiant.*

State of North Carolina,
Wake County:

Sworn and certified to before me this 18th day of February, 1957.

[seal] Mary M. McCord, *Notary Public.*

My commission expires January 30, 1958.

Senator Ervin. The hearing will recess until 10 o'clock tomorrow morning.

(Whereupon, at 4:20 p. m., the committee recessed to reconvene at 10 a. m., Thursday, February 28, 1957.)

CIVIL RIGHTS—1957

THURSDAY, FEBRUARY 28, 1957

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

The subcommittee met, pursuant to recess, at 10 a. m., in room 104–B, Senate Office Building, Senator Roman L. Hruska presiding.

Present: Senators Hruska, Hennings, and Ervin.

Also present: Charles H. Slayman, Jr., chief counsel, Constitutional Rights Subcommittee, and Robert Young, professional staff member, Judiciary Committee.

Senator HRUSKA. The committee will come to order.

We will continue the hearings on the civil-rights legislation.

Mr. Slayman, whom are we going to call today?

Mr. SLAYMAN. Mr. Chairman, we have five witnesses and possibly a few more today. We have five scheduled, with the first being Rev. William Borders, a minister of the Wheat Street Baptist Church, from Atlanta, Ga.; he had been scheduled for the second day of our hearings and stayed over to our third day. The third day was a Saturday and we ran until late in the afternoon and were not able to hear Dr. Borders nor Mr. Courts nor Mr. Walden; so they have all come back here at their own expense.

Senator HRUSKA. Very well. We are sorry they could not have been accommodated earlier. They know the circumstances which attended that situation, but we are glad to have them here now.

Dr. Borders, will you take the chair, please, and proceed with your statement?

Mr. SLAYMAN. Would you give your name and address?

TESTIMONY OF REV. WILLIAM H. BORDERS, WHEAT STREET BAPTIST CHURCH, ATLANTA, GA.

Mr. BORDERS. My name is William Holmes Borders, of the Wheat Street Baptist Church, in Atlanta, Ga.

Senator HRUSKA. You may proceed with your statement in your own way.

Mr. BORDERS. Members of the committee, it is kind of you to let me come. God bless every one of you from the bottom of my heart.

Mark Twain found himself before an audience with no one to introduce him, so he introduced himself. Mr. Clarence Mitchell, director of the Washington bureau of the NAACP, has suggested that I do exactly that. Most important, I am a human being interested in democracy for all.

I am Rev. William Holmes Borders. I was born in Macon, Ga. I worked on farms in Twiggs, Houston, and Bibb Counties. I sold papers on the streets of Macon and carried mail in that same city. I worked my way through college, the seminary, and earned a master's degree at Northwestern University. Three schools conferred doctorate degrees upon me.

I am pastor of Wheat Street Baptist Church, in Atlanta, Ga., for 19 years. It is the largest Negro church in the South. We own a million-dollar block of property.

I am president of the Georgia Baptist Missionary and Educational Convention. I have written five books: Follow Me, Seven Minutes at the Mike in the Deep South, Men Must Live as Brothers, Trial by Fire, and Thunderbolts.

I am chairman of the Love, Law-Liberation Movement composed of all denominations of all churches among Negroes in Atlanta.

It was organized to help implement civil rights at a local level. After the Montgomery Supreme Court decision, we began with the buses. In Atlanta, from many angles a wonderful and marvelous city, some cabs ride only whites. Some ride only Negroes. In spite of our fine schools, magnificent churches, and thriving businesses and industry, Negroes are forced by law to sit in the back of buses.

In 1947 I traveled all over Europe and the Holy Land. In 1955 I traveled after the Baptist World Alliance through Europe, the Holy Land, Egypt, India, China, Japan, Hawaii, and back to Los Angeles. In conversation and in speaking, I told everybody of the United States, one of God's greatest countries, the leader of the free world, the hope of many, many millions. In no place did I see people because of race forced to sit on a particular part of a bus as is the case in most of the States of the South.

We Negro preachers of Atlanta decided we would through nonviolence attack this evil. We schooled ourselves through citywide prayer meetings. We schooled our people. We wrote out steps—read, reread them to the people. We mimeographed thousands. Here are those instructions.

1. Pray for guidance and commit yourself to complete nonviolence in word and action, observing the ordinary rules of courtesy and good behavior.

2. If any person is being molested, do not arise to go to his defense but pray for the oppressor and use moral and spiritual force to carry on the struggle for justice.

3. The bus driver is in charge of the bus; ask his aid and report any serious incidents to him. Then report to one of our leaders immediately, giving date, time, place, and names of persons involved, if possible.

4. You will be notified when we wish you to begin helping to desegregate the buses and trolleys, but until then be quiet but friendly, proud but not arrogant, happy but not noisy.

5. Be sure you are neat and clean at all times.

6. Do not be drawn into argument about segregation, desegregation, or integration; in case of an accident, talk as little as possible, and always in a quiet tone.

7. If cursed, do not curse back. If pushed, do not push back. If struck, do not strike back, but show love and goodwill at all times.

8. Remember always to pray, especially for those who would persecute anyone.

In addition, we decided our strategy would be open honesty. We talked to the mayor. We told the chief of police. We conferred with the president of the bus company. We sat down with the Federal district attorney. We told them of our nonviolent movement. Those gentlemen were courteous and kind.

On January 9, at 10 a.m., a group of preachers went to the heart of Atlanta to board the bus and ride in front.

We did. It caused excitement. The operator claimed the bus was out of order. A mechanic came. We remained seated in front. The operator changed the name of the bus from "Amsterdam" to "Special."

We rode through downtown sections reading our Bibles. After riding many blocks, we got off. When we attempted to go out of the front of the bus, since we were nearer the front door, the operator told us once to go out the rear. One of the preachers said, "I want to go out the front." The operator permitted our exit from the front, which practice had been for whites only.

On January 10, we met at Wheat Street Church at 12 o'clock. We planned to go again to the heart of Atlanta to board eight buses.

After our prayer meeting and instructions, a summons was served for the arrest of six preachers who had violated the day before the Georgia segregation law. We were put in jail.

Those preachers arrested were Rev. B. J. Johnson—he is present today—of Mount Calvary Baptist Church; Rev. Roy Williams, pastor of Smith Chapel; Rev. Howard Bussy, pastor of Perry Homes Baptist Church; Rev. A. Franklin Fisher, pastor of West Hunter Baptist Church; Rev. H. A. Shorts, presiding elder of the C. M. E. Church; and Rev. William Holmes Borders.

On Tuesday, January 15, we were indicted. The cases are now in court.

Whereas riding a bus is a simple matter if rights are violated because of color, it is the urgent business of democracy to rectify this wrong.

I want, Negroes want, democratic and Christian people everywhere want the civil rights bill passed. It will help make the South and our country a more decent place for all its citizenry. Implementing the Constitution, the Supreme Court decision on education and the Montgomery but protest take nothing from whites.

It will give something to Negroes which is rightfully theirs. The only way whites can keep democracy for themselves is to give it to everybody. It multiplies with division.

The minorities of the United States, especially the Negro, are the social indicators of American democracy. Thank God that bread is being thrown to Hungarians over there. It is a shame that bombs are being thrown at Negro homes and churches over here because they ask to be seated in buses as other people.

Charity begins at home and spreads abroad. Two-thirds of the world is brown and black. Our international stock drops and our competition for world leadership is wounded if we allow prejudice, that blind vampire of the mind, to suck the red blood of healthy hopes.

In the name of decency, in the name of democracy, in the name of world leadership, in the name of God, let us pass strong civil rights legislation.

I thank you for the opportunity to appear before this committee.

Senator HRUSKA. Mr. Slayman, have you any questions on behalf of the committee?

Mr. SLAYMAN. No, I do not, Mr. Chairman; except where Dr. Borders mentioned the names of some gentlemen.

I presume they do not wish to testify themselves.

Mr. BORDERS. Not themselves. Some of them have come.

Mr. SLAYMAN. Since you mentioned them for the record, it will be all right if you introduce them if they are here.

Mr. BORDERS. This is Rev. B. Joseph Johnson, pastor of the Mount Calvary Baptist Church in Atlanta. He is one of the six ministers. We have Reverend Abell. He is not one of the six, but he is a member of the movement to which I refer.

Senator HRUSKA. Dr. Borders, referring to page 2 of your prepared statement, item No. 4, there starts out by reading, "You will be notified when we wish you to begin helping," and so on.

Who was to do the notifying?

Mr. BORDERS. The preachers on the liberation movement to their respective congregations.

Senator HRUSKA. So that when you spoke of "what we will do" in that connection on that entire page and in your statement you referred to that group of preachers who had organized in the fashion which you had described?

Mr. BORDERS. Exactly.

Senator HRUSKA. That is all.

Anything further, Mr. Slayman?

If not, call the next witness.

Mr. YOUNG. Mr. Chairman, Senator Ervin—oh, here he is now.

Senator HRUSKA. The next witness will be Rev. Gus Courts. Step forward, please.

Will you give your name and address to the reporter, please?

STATEMENT OF CLARENCE MITCHELL, DIRECTOR OF NAACP

Mr. MITCHELL. Mr. Chairman, I had asked the subcommittee's permission to read this one-page statement introducing Mr. Courts, and if I may, I will identify myself for the record as Clarence Mitchell.

Senator HRUSKA. Very well; you may proceed.

Mr. MITCHELL. Mr. Chairman and members of the subcommittee, I thank you for giving me this opportunity to present a valuable citizen of our country, Mr. Gus Courts, formerly of Belzoni, Miss.

I am sure that the two Senators and the House delegation from Mississippi would agree with me when I say that their State is a place of great physical beauty, rich earth, and vast promise for the future.

I have the good fortune to be linked with that State through my father-in-law, a fine gentleman who was born in Carrollton, Miss.

Each day the north- and west-bound trains and buses carry a substantial number of Mississippi's colored citizens beyond its borders. Again and again in New York, Chicago, San Francisco, and Seattle, the question arises, "Why do they leave Mississippi?"

Today, we have with us a man who can give his answed to that question. I met him in Mississippi at the same time I met Dr. A. M. Mackel, a prosperous dentist of Natchez, and Mr. Richard West, the operator of a profitable filling station in Greenwood, Miss. All three

of these men, and many others, are now refugees from Mississippi. They have left their businesses and possessions behind. Although they are no longer young, they must now start anew in other parts of our country.

The witness is a graduate of Alcorn College in Mississippi where he was the baseball star and an outstanding student. In Belzoni, he was a deacon in the Greengrove Baptist Church. He could always be counted on to help in numerous charitable and civil causes. He served as president of the local branch of the NAACP.

In Belzoni, Mr. Courts owned a grocery store and trucking business valued at more than $15,000.

On the night of May 9, 1955, Rev. G. W. Lee, who was associated with Mr. Courts in trying to obtain the right to vote for colored citizens in the area, was shot and killed. Local authorities first announced that the Reverend Mr. Lee was killed in an automobile accident. They even said that lead shotgun bullets in his face were really fillings from his teeth. His murderers have not been arrested.

Mr. Courts continued to give leadership in a register and vote campaign. On the night of November 25, 1955, while doing business in his store, he was shot and critically wounded.

After he was released from the hospital, he moved to Chicago where he now lives. He is now an ordained clergyman. From this point on, he will tell his own story in his own way.

Senator ERVIN. Just one question at this point.

Your statement about Reverend Courts is based upon information given you by Reverend Courts and others?

Mr. MITCHELL. That is correct.

Senator ERVIN. In other words, you have no personal knowledge of the matter?

Mr. MITCHELL. Of what, Senator?

Senator ERVIN. Of the events, the reference to Reverend Courts that you recounted. It is based on hearsay as far as you are concerned?

Mr. MITCHELL. I would not say it is based on hearsay. I have been in Mississippi. I have met him down there in the State. He is here to talk in his own way about what happened.

Senator ERVIN. What I mean is, your testimony about Rev. Lee, you do not contend that you are an eyewitness to anything about Reverend Lee?

Mr. MITCHELL. Of course not. I would say this, though. I have read the statements; that is, the notarized statements of witnesses. It is a matter of record in the Department of Justice and other places.

I think, Senator Ervin, it is sort of like the situation that Thomas found himself in when he was told that Christ had risen. Thomas got an opportunity to stick his hands in the wounds, but it still did not alter basic facts.

Senator ERVIN. No; not in that case, because the wounds were there. He stuck his hands in the wounds.

Now a lot of this stuff is just based on charges made by people who are never subject to cross-examination.

Mr. MITCHELL. In this case I think it is easy to say "Ecce homo."

Senator HRUSKA. The witness will proceed in his own way to make his statement.

TESTIMONY OF REV. GUS COURTS, BELZONI, MISS.

Mr. COURTS. Mr. Chairman and gentlemen of the committee, thank you for this opportunity to testify on behalf of the Negroes in the State of Mississippi.

My name is Gus Courts, former owner of the Courts Grocery Store and Trucking Business, Belzoni, Miss. I was born in Mississippi; my parents and grandparents before me. We helped to make Mississippi rich and prosperous.

Now, just like those Hungarian refugees from Russian oppression, you see before you an American refugee from Mississippi terror. I had to leave my $15,000 a year grocery business, my trucking business, my home, and everything. My wife and I and thousands of us Negroes have had to run away. We had to flee in the night. We are the American refugees from the terror in the South, all because we wanted to vote.

I saw the necessity of getting the Negroes in Humphreys County, Belzoni, Miss., to pay poll tax and register to vote. This is a county in which no Negroes have ever voted. After going to the office to pay our poll tax, the sheriff, Ike Shelton, refused to accept our money. A few Negroes signed an affidavit and had the sheriff brought before the Federal grand jury in Oxford, Miss., in 1953.

After the sheriff had been before the court, he assured the court he would let the Negroes pay their poll taxes and qualify themselves to vote.

We succeeded in getting about 400 Negroes in Humphreys County to pay their poll tax, and out of this number only about 94 registered.

Now, in my county, Humphreys County, there are 17,000 colored people and 7,500 white people. In early 1955, we got 400 Negroes to pay their poll tax. But when they—the Negroes—would go down to the registrar's office to register to vote, the registrar kept putting them off. They would tell them, "We are busy today; come back tomorrow."

When they got back the next day, the registrar told them he was still busy and to come back next week. At that time the legislature was in session passing a law to tighten the registration law. That law was passed and is now in effect, so that no matter how much education a Negro has, he cannot pass the registration law. When this happened, out of the 986,000 Negroes in Mississippi only about 20,000 were registered to vote, the White Citizens Councils about that time organized.

In 1955, the White Citizens Councils, through the registrars, purged about 12,000 Negroes off the registration books. Although there are 497,000 potential colored voters in Mississippi, only 8,000 are now on the books.

The White Citizens Councils began to put all types of pressure on the Negroes. We believe they were responsible for the killing of Rev. George W. Lee, who was the first Negro in Humphreys County to register and qualify himself to vote.

On May 7, 1955, in Belzoni, Miss., he was driving home in his car from town. Someone drove up beside him in a car and shot him through the window with a shotgun. The blast tore off all the side of his face. The very next morning one of the members of the White

Citizens Councils, Percy Ferr, a planter, came in my store and told me, "They got your partner last night."

I said, "Yes; you did." He said, "If you don't go down and get your name off the register, you are going to be next. There is nothing going to be done about Lee, because you can't prove who did it."

I told him I would do just like Reverend Lee; I'd as soon die a freeman than live a coward. I was not going to take my name off the register.

A few days after that, this same man came back to my store and told me there were two things I would have to do. I would have to take my name off the register and resign as the president of the NAACP in Humphreys County, because they were not going to let it operate there, and if I did not do it I was going to be put out of business. They would see that the wholesalers would not sell me any groceries.

First, I went to Memphis, Tenn., to a grocery firm, which is about 150 miles away, and bought some groceries, and then I went to Jackson, Miss., which is 8 miles away. I made a contract with a firm in Jackson to have groceries delivered to my store in Belzoni, Miss. That was the way I had to get my supply of groceries.

On November 25, 1955, I was busy waiting on customers in my store. Someone drove up in a car and fired slugs through the store window with a shotgun. The slugs caught me in my left arm and stomach. The blood began to flow. I called the sheriff and could not get him. The chief of police came and ordered me to the hospital, which is just 2 blocks from my store.

When I walked out to get into the car, I told my friend, Ernest White, who came to take me to the hospital, that I wanted to go to Mound Bayou Hospital, which is 80 miles away. Mound Bayou is the colored town in Mississippi. The sheriff came over in 30 minutes to my store, after I had left for the hospital. He asked my wife where I was. He said he had been over to the hospital, just 2 blocks away, for 30 minutes waiting for me. When my wife told him I had gone to Mound Bayou to the hospital there, he disapproved of that.

Then the sheriff asked the chief of police why he had sent me to Mound Bayou when he, the sheriff, told him, the chief of police, to send me to the hospital which is about 2 blocks from my store. I believe they would have finished me off if I had landed up in the Belzoni Hospital.

As a result of the shooting, I have suffered from a nervous condition. It has affected my heart to the extent that I have to be constantly under a doctor's care. I do not have much use of my left arm. I cannot take this arm and open a door.

In August 1955, when the primary election of officers of the State was about to be held, there were only 22 registered Negroes left on the books in my county, Humphreys County. I was notified that very next morning that the first Negro who put his foot on the courthouse lawn would be killed. The 22 Negroes whose names were left on the books met in my store and asked me what they should do. I told them we would go down to vote, if they were willing to go. They said they were, and we went down to vote.

After we had gotten to the registrar's office, we were handed a sheet of paper which contained 10 questions. They told us we could not

have the ballots until we had answered the questions. The first question was, "Are you a member of the primary Democratic Party?" The next question was, "Do you want your children to go to school with the white children?"

The next question was, "Are you a member of or do you support the NAACP?"

Those are the only three questions I remember. They refused to let us vote.

A few days later, on Saturday, August 13, 1955, Lamar Smith was called to the courthouse at our county seat in Brookhaven, Miss. Nobody knows who called him. He was one of the leaders in trying to get the colored people to vote. Just as he stepped on the first step of the courthouse, someone shot him down and killed him, in the broad daylight. More than 50 people were standing around, including the sheriff. They picked the body up and took it in the courthouse and sat around and looked at it. Then they called his wife and children to come and get the body. Then the grand jury met and could not get a true bill. Then the blood began to run in Mississippi. You read about Emmett Till. I can show you the magazine story where the Bryant brothers admit to the world they killed Emmett Till. But the jury let them go.

There have been a lot of Negroes found in rivers. Others just killed in broad daylight.

I thought when Reverend Lee was killed on May 7, 1955, that I would stay until the end. Lots of our people who wanted to raise their children began to leave Mississippi by the carloads. They are still leaving by the thousands. Some cannot leave, they do not have means to go. I thought I would never have to leave. My grandparents and great-grandparents worked those cotton plantations and farms and helped to make Mississippi a rich and prosperous State.

I understand that Governor Coleman, of Mississippi, when testifying before the House Judiciary subcommittee last week said that he assumed that failure to pay poll taxes was one of the reasons why the Negro vote had been reduced. The governor knows that this is not so. I now tell this committee that the Negro vote in Mississippi has been reduced because of intimidation, violence, and fraud on the part of those who operate the election machinery and their associates.

I now tell this committee that the kind of thing that happened to me and other instances of intimidation are the real causes for the small colored vote in that State.

Not only are they killing the colored people who want to vote and be citizens, but they are squeezing them out of businesses, foreclosing their mortgages, refusing them credit from the banks to operate their farms. They either won't vote or they leave town.

I hope this committee and the Congress will pass a law which will correct this awful condition.

I thank you for the opportunity to appear before this committee.

Senator HRUSKA. Let the record show that at this time I will have to leave the committee room to attend another subcommittee of the Judiciary Committee.

Senator Ervin, will you be kind enough to take charge of the meeting?

Senator ERVIN. You left Mississippi in 1955?

Mr. COURTS. 1955, after I was shot. In fact, I went to the hospital in Mound Bayou. When I left the hospital I went to Jackson, Miss. I stayed there until 1956 but I was living in Jackson because I did not come back to Belzoni.

Senator ERVIN. Did you make a report to the Department of Justice similar to the statement you read to this committee?

Mr. COURTS. Yes, sir; they have it on file.

Senator ERVIN. And has the Department of Justice instituted any prosecution?

Mr. COURTS. No, sir; they came down and investigated.

Senator ERVIN. They have investigated the matter?

Mr. COURTS. Oh, yes.

Senator ERVIN. And when did this alleged trouble occur?

Mr. COURTS. Which now, the shooting?

Senator ERVIN. The time you claim you were shot.

Mr. COURTS. November 25, 1955.

Senator ERVIN. That is 15 months ago?

Mr. COURTS. This is 1957 now——

Senator ERVIN. I say it is 15 months ago; is it not?

Mr. COURTS. Something like that. I never counted the months.

Senator ERVIN. And you know the Justice Department has investigated?

Mr. COURTS. Oh, yes; they came down and investigated.

Senator ERVIN. And so far as you know, the Justice Department has instituted no prosecution?

Mr. COURTS. So far as I know.

Senator ERVIN. They certainly have plenty of law under which to proceed in my judgment, if your statement is correct.

Now how long had you been in business at Belzoni?

Mr. COURTS. About 7 years.

Senator ERVIN. Did you file a Federal income tax for 1954?

Mr. COURTS. Well, I filed income-tax returns. Of course I paid income tax. I had an auditor to take care of that part of the business. He had taken care of that part of it and whenever he told me what to send in I sent it in.

Senator ERVIN. How much Federal income tax did you pay in 1954?

Mr. COURTS. Well, I do not have that record right here. I could not recollect exactly how much.

Senator ERVIN. You have a pretty good recollection as to the amount, roughly speaking; don't you?

Mr. COURTS. Well, I usually pay something like; no, not income, the taxes are not income.

Senator ERVIN. I am asking about income taxes.

Mr. COURTS. No, no; I did not pay any income tax. The reason of it was my business had fell off to the extent that it did not justify it.

Senator ERVIN. Let's go back to the time before your business fell off. What year did you go into business?

Mr. COURTS. I went into business in 1947, I believe it was.

Senator ERVIN. Did you pay a Federal income tax for 1947?

Mr. COURTS. No; because I just bought a business and just was trying to build a business at the time. My business was small at that time.

Senator ERVIN. Then you stayed in business until 1955?

Mr. COURTS. Yes; that is right.

Senator ERVIN. In order to not take too much time, did you pay a Federal income tax at any time?

Have you ever paid a Federal income tax?

Mr. COURTS. No, sir.

Senator ERVIN. Never have?

Mr. COURTS. I paid income tax but I don't know whether—not Federal income tax. I paid income tax, however.

Senator ERVIN. You paid State tax?

Mr. COURTS. That is right.

Senator ERVIN. Do you remember what amount of State income tax you paid in any 1 year?

Mr. COURTS. No; I could not just tell.

Senator ERVIN. So far as you can testify now, you have never paid any Federal income tax whatever?

Mr. COURTS. No.

Senator ERVIN. How many members of your family?

Mr. COURTS. I have a wife and two children.

Senator ERVIN. What are the ages of the children?

Mr. COURTS. The girl—1 of the girls is 18 and 1 is 14.

Senator ERVIN. Then you realize that during this time you were subject to paying not less than 20 percent of all of your net income above $600 exemption for you and each one of your minor children and above any charitable contributions and things of that nature you might have had——

Mr. COURTS. I paid what the State required of me to pay.

Senator ERVIN. I am talking about Federal income tax.

Mr. COURTS. You see, I am taking for an instant now with my store and the farmers don't make enough money—I don't know whether you have any experience about the farmers.

Senator ERVIN. The reason I am asking you these questions is you set out in your statement about your $15,000 a year business, or something to that effect——

Mr. COURTS. Yes.

Senator ERVIN. And I am at a loss to understand how a man who has a business as much as $15,000 a year does not pay Federal income tax, considering how low the exemptions are.

Mr. COURTS. Well, I have had a man that is supposed to know, and I did not figure out that, and he figured it out. He also told me what taxes, what income to pay, and I paid, and it is always satisfactory with the States.

Senator ERVIN. You say you never paid the Federal Government any income tax?

Mr. COURTS. And, of course, I figured——

Senator ERVIN. You said here, "I had to leave my $15,000 a year grocery business."

Mr. COURTS. Yes.

Senator ERVIN. And you claim you had a $15,000 a year grocery business, and yet you admit that you never at any time made any Federal income-tax returns or made any payment of Federal income tax?

Mr. COURTS. Let me explain that to you, Mr. Ervin.

I could not say that I did not. If you have got an auditor——

Senator ERVIN. You have said you had not.

Mr. COURTS. Here is what I meant: If you got somebody figuring out—I never did figure it out. Here is an auditor that did that, and

he told me what my taxes were, all of the taxes, what I owe the State or the Federal Government, and whatnot.

All he told me, a whole lot of times he would come to my store and say, "Courts, you owe so much and so much taxes for income or whatever it was."

I just give him the money and he sent the money on it. That is the way it was done.

Senator ERVIN. But you have admitted here that you never at any time paid any Federal income tax.

Mr. COURTS. Not personally. I probably paid it every year, so far as that is concerned.

Senator ERVIN. Do you want to change your testimony from what you gave a while ago?

Mr. MITCHELL. Mr. Chairman, could I ask a question?

Senator ERVIN. I believe it would be better to finish this.

Mr. MITCHELL. I think it has a very fundamental bearing on the constitutional rights of this witness. I would like to ask it.

The question is this: Since this is a complicated and a serious question, wouldn't it be better to give him an opportunity to submit for the record such information as he has on his taxes?

I would feel reasonably confident that it would show he has complied with the law.

Senator ERVIN. In view of the fact that the chief occupation of men at the present time is paying Federal income taxes, I would not think a person would need any time to refresh his recollection.

Mr. MITCHELL. I would say respectfully, Mr. Chairman, that in my family, my wife, who is a lawyer, fills out a great many income taxes for people. I am satisfied that some of them, who are competent business people, don't realize what taxes they are paying. They just pay it.

Senator ERVIN. I wish I could forget mine. I would certainly be happier than I am.

Now you stated positively that you never paid any Federal income tax?

Mr. COURTS. I did not mean to say—I told you in our city—I had a man to figure out those income taxes and everything, and when he came to my store he told me what I owed, I just give him a check for the money. I do not know if it was Federal tax or what it was. He just told me what tax I owed and I was paying him by the month to do that.

Senator ERVIN. If you did not know that why did you state a while ago that you never did? I started out and asked you about 1955 and you said you did not pay any income tax for 1955.

Mr. COURTS. I did not understand the question. I did not understand at the time what you were driving at, but now I know because I told you in front that I did not myself, because I did not figure out the tax, I could not do it. I had the State one time to run in on me on that account. I paid the man, paid him every month to do this for me, and he did.

Senator ERVIN. Do you deny that you admitted positively that you had not paid any Federal income tax any time you have been in business? Now do you want to deny that you swore that just a while ago?

Mr. COURTS. Well, Mr. Ervin, I could not say. I did not know what you was—when you asked me I knew this, because I tried my

best to make it plain to you, and that was that I had a man to do that for me.

Senator ERVIN. You did make it plain to me and I want to know now do you want to change your testimony and make it unplain?

Mr. COURTS. Here is what I am saying. I had a man, an auditor who knew his business and I paid him by the month to figure out my taxes, whatever it were, Federal taxes and whatnot, and when he would come there and collect his money and send it off, now that is just it.

Senator ERVIN. I am asking you this question: Didn't you testify positively——

Mr. COURTS. No; I did not. I did not say positively.

Senator ERVIN. I ask the reporter to go back and read your testimony.

Mr. COURTS. I did not know what you were talking about at the time.

Senator ERVIN. You mean to tell me you don't know what Federal income taxes are?

Mr. COURTS. I know what it is.

Senator ERVIN. I will ask the reporter to go back to the original question where I asked him about income tax.

(The question was read.)

Senator ERVIN. Do you want to change any of your testimony about that?

Mr. MITCHELL. Mr. Chairman, I think both of us realize you are asking some very serious legal questions here and Mr. Courts is not represented by counsel.

Mr. Walden, who is one of our witnesses and who is a lawyer, is prepared, with your permission, to serve as counsel.

Senator ERVIN. He is not accused of anything here. He is a witness. I am just trying to test the value of his testimony, and here is a man who comes here and makes a sworn statement before the committee that he was compelled to leave a $15,000 a year grocery business in Mississippi, and admits that he never did pay a Federal income tax.

Mr. MITCHELL. I respectfully say, Mr. Chairman, that his admission is that he turned over to a person who was authorized to handle his accounts, as thousands of Americans do——

Mr. COURTS. That is right.

Mr. MITCHELL. And in accordance with the requests of that person he submitted information. He has said very clearly that he thought it was income tax and he paid whatever he was supposed to pay. I respectfully submit that if the Chair would give us an opportunity to furnish those documents, we would be able to show that he did in fact pay Federal and State income tax, or at least complied with the law.

Senator ERVIN. Reverend Courts comes here and makes a positive statement, and I am just testing the credibility of his testimony as a witness, that is all.

Now do you wish to change your statement that you made that you never paid a Federal income tax?

I do not want to be unfair to you. If you want to change your testimony, I will give you an opportunity at this time. I wish you would let me examine him without assistance.

Mr. COURTS. It is not but one thing that I could do.

I think I made this as plain to you as I could, unless you are trying to pick some kind of a flaw in it. The fact because I told you in front, I had a man to figure out those taxes and naturally if anybody, if he was figuring out he would figure out Federal income but he did not tell me Federal or what. He just told me what your tax was, come up here and pay and I give him the money and I know he was paid. Whatever the law required, that is what I paid.

Senator ERVIN. If that is a fact——

Mr. COURTS. That is a fact that I can prove.

Senator ERVIN. If you did not know it why did you swear positively a while ago that you had never paid a Federal income tax? Are you accustomed to make positive assertions about things of which you have no knowledge?

Mr. COURTS. Just like I told you in front, I am sticking to that.

Senator ERVIN. Which one of those things—you have told me two things. Which one are you sticking to now?

Mr. COURTS. When I told you I had a man to figure out this, an auditor, and he came at the end of the year and made a statement, always told me how much money I had to pay and I gave him that money to pay. That is all I can do.

Senator ERVIN. Then you want to repudiate your statement that you made to me that you never had paid a Federal income tax?

You want to take that back?

Mr. COURTS. I will have to take it back because I did not understand what you were talking about.

Senator ERVIN. You mean you did not understand what I was talking about when I asked you whether you had paid Federal income taxes at any time while you were in business in Mississippi?

Mr. COURTS. Here is what——

Senator ERVIN. Answer that question. That is a very simple question.

Mr. COURTS. It is a simple question, it is true enough, but if you are paying taxes, you take a fellow like me, when he comes down to this tax that is why I got a man to do it for me because I did not understand, did not know anything about it, and I got somebody that did now to do it. I don't know what kind of a tax I was paying and I did not ask no questions about it.

Senator ERVIN. Do you know whether on the registration books of Mississippi they make any distinction designating whether the person who registers is white or colored?

Mr. COURTS. Let me understand that question now. Let me understand you. What did you say?

Senator ERVIN. Do you know whether in Mississippi they indicate on the registration books the race of a person who registers?

Mr. COURTS. Do they indicate the race you mean?

Senator ERVIN. Yes; on the registration books.

Mr. COURTS. Well, now I do not know, so far as it was when I went register, when I registered myself I went in after I paid my poll tax. I told the registrar I wanted to register. She did not do a thing but get the books and register me. That is all she did then.

Senator ERVIN. What I am getting at, you state here as a positive fact that there were only 20,000 colored people registered in Mississippi.

Mr. COURTS. Sure.

Senator ERVIN. Now where did you get that information?

Mr. COURTS. That is the record. You can go to the record and it will show that.

Senator ERVIN. Have you gone to the records?

Mr. COURTS. Sure I have seen the records.

Senator ERVIN. How many counties are there in Mississippi?

Mr. COURTS. Eighty-two.

Senator ERVIN. Have you gone to the records of those 82 counties?

Mr. COURTS. I have not gone to all, but I went to the records of the whole county.

Senator ERVIN. What county?

Mr. COURTS. All of the counties.

No; I said I saw the record of the county. They have a record of al the Negroes that is qualified in the State of Mississippi.

Senator ERVIN. Where is that record?

Where did you see that record?

Mr. COURTS. Now what do you want to do, want to prove that that is not true? Is that what you are trying to do?

Senator ERVIN. I am just trying to find out on what you make the statement.

Where did you see any record, any record showing that only 20,000 colored people were registered, on the registration books in Mississippi? I just want to know where you got your evidence; your statements.

Mr. COURTS. Mr. Ervin, as a matter of fact you could even read that so far as that is concerned. It was just come out in the papers and everywhere.

Senator ERVIN. Then you did not see the record then. You read it in the paper. You testified positively that you saw that on the record.

Now do you want to change that and say you saw it in the newspaper?

Mr. COURTS. I did not say. I said that the record—if you don't believe what I say you can go to the record and find it out.

Senator ERVIN. I am not saying whether I believe it or do not believe it, but I am trying to find out on what authority, how you were willing to come here and swear that there were only 20,000 colored people on the registration books in Mississippi. That is a simple question. I want to know how you found it out, on what you base that.

Mr. COURTS. I found it out on the basis just like anything, they have a record working. You can go to the office just like you can go to Belzoni. We go up there, they have got the record. You can go to Belzoni. I went there to find out how many Negroes had paid their poll tax. The record is there. They have got a record there.

Senator ERVIN. Belzoni is just one of the 82 counties in Mississippi.

Mr. COURTS. That is right.

Senator ERVIN. Now how did you find out about the other 81 counties?

In other words, I am just trying to find out why you come here and testify on oath that there are only 20,000 Negroes registered in Mississippi.

Mr. COURTS. Well, if you don' believe it, you can go to the record.

Senator ERVIN. I am asking where is that record that I can go to?

Mr. COURTS. You can go to the record in Jackson, Miss. They got it there. They know how many there are.

Senator ERVIN. Since you don't know whether they put down on the record whether the voter is white or colored, how would you tell it by looking at the records, even if you had the time?

Mr. COURTS. Yes, they have it. They are compelled to keep it separate and you know that.

Senator ERVIN. No, they do not in my State. I am trying to find out——

Mr. COURTS. I am talking about Mississippi. I have not been to North Carolina. I am talking about Mississippi.

Senator ERVIN. Did you go to the records in Jackson?

Mr. COURTS. I did not go to the records.

Senator ERVIN. How do you know there is a record in Jackson, Miss., if you have never been there to look at it?

Mr. COURTS. My lawyer told me there was a record there.

Senator ERVIN. Oh, your lawyer.

Mr. COURTS. Sure, and I have had one working with me all the time.

Senator ERVIN. Did your lawyer tell what the record showed?

Mr. COURTS. He said it was 20,000 Negroes registered in the whole State of Mississippi.

Senator ERVIN. So that is what your statement about the 20,000 is based on. It is based on what your lawyer told you.

Now where is your lawyer? Who is he?

Mr. COURTS. He is in Mississippi.

Senator ERVIN. What is his name?

Mr. COURTS. Well, do I have to tell?

Senator ERVIN. Yes, you have to tell it, if you want to make a disclosure of the facts about this.

Now what lawyer in Mississippi told you that the records at Jackson, Miss., showed that there were only 20,000 colored people on the registration books in the 82 Mississippi counties?

Mr. COURTS. Well, if I have to do it, his name is Carsie Hall, Jackson, Miss.

Senator ERVIN. When did he tell you that?

Mr. COURTS. 1956, because after I got shot I went to Jackson and I talked with him concerning some things, me getting shot and about they would not let me vote and all, and that is how we discussed this and he brought these records out.

He has the records there to show it.

Senator ERVIN. You saw the records he had there?

Mr. COURTS. Sure.

Senator ERVIN. Why didn't you tell me that instead of telling me——

Mr. COURTS. I told you it was my lawyer that did.

Senator ERVIN. He was not keeping any official records for the State of Mississippi, was he?

Mr. COURTS. He was a lawyer and he was dealing in that thing. I think he knew what he was talking about. I think he did.

Senator ERVIN. And that is what you base it on?

Mr. COURTS. Because he had a record to show.

Senator ERVIN. Outside of that, you had no information about it?

Mr. COURTS. I have not gone to the record down there and looked on the record and seen it. I only had the record through my lawyer, Carsie Hall, at Jackson.

Senator ERVIN. So that is the only information you have is what you got from him?

Mr. COURTS. And from his record. He showed me the record.

Senator ERVIN. And he is not an official of the State of Mississippi, is he?

Mr. COURTS. He is a lawyer in the State of Mississippi, yes, sir.

(Senator Hennings enters the room.)

Senator HENNINGS. I am sorry to be late this morning, gentleman. I had another meeting.

Senator ERVIN. Were you bleeding very badly when you say you got shot?

Mr. COURTS. Sure, I reckon I was.

Senator ERVIN. Who shot you?

Mr. COURTS. I don't know positively who shot me.

Senator ERVIN. What time of the day or night were you shot?

Mr. COURTS. About 8 o'clock at night.

Senator ERVIN. Where were you?

Mr. COURTS. In my store waiting on a customer.

Senator ERVIN. And you don't know whether the man who shot you was white or colored, do you?

Mr. COURTS. Oh, yes, I know he was white because I had witnesses in the store that ran out the door in the car and I saw the car.

Now I don't say, I would not say that I saw the man because I could not see him from where I was, but the woman that I was waiting on ran out of the store, she ran back and said "Mr. Courts, those are white people shooting in here." She ran out the store.

Senator ERVIN. She ran out and looked at them and came back and told you they were white people?

Mr. COURTS. That is right.

Senator ERVIN. You never saw them yourself?

Mr. COURTS. I didn't see them. Did I say I saw them?

Senator ERVIN. No. I was just trying to find out.

Mr. COURTS. The only thing I saw was the car.

Senator ERVIN. What sized place is Belzoni?

Mr. COURTS. Belzoni is a pretty good-sized place, not too large a place.

Senator ERVIN. About what is the population?

Mr. COURTS. It is got somewhere about 5,000 people.

Senator ERVIN. And do you know whether you were shot with a shotgun, pistol or what?

Mr. COURTS. They shot me with a shotgun.

Senator ERVIN. Did you see the shotgun?

Mr. COURTS. No; it could not have been a pistol because they got 3 bullets out—3 pellets out of me—and they got 8—3 out of me and 5 of the pellets caught in the big rim of my pickup truck parked just opposite my window when they shot through and the sheriff himself went there and got 5 of those pellets and 3 out of me.

Senator ERVIN. What do you call a pellet?

Mr. COURTS. Something that is made up—you know, they take a shell and take the shots out and put little, small pieces of lead in. That is what they call a pellet.

Senator ERVIN. Did this woman tell you who the people were that shot you?

Mr. COURTS. She did not know who they were.

Senator ERVIN. She did not know?
Mr. COURTS. That is right.
Senator ERVIN. Where does she live?
Mr. COURTS. She lives in Belzino.
Senator ERVIN. Let me understand.
Doxey Hall, you say, was the lawyer?
Mr. COURTS. That is right.
Senator ERVIN. And you say you got the information from him in Jackson, Miss.?
Mr. COURTS. In Jackson, Miss.
Senator ERVIN. As a matter of fact, does he live in Jackson, Miss.?
Mr. COURTS. He lives in Jackson, Miss.
Senator ERVIN. I will ask you if he does not live in Columbia, Miss.
Mr. COURTS. He lives in Jackson.
Senator ERVIN. He has got a law office in Jackson?
Mr. COURTS. Sure, he certainly does.
Senator ERVIN. Is he a white man or colored man?
Mr. COURTS. Colored man.
Senator ERVIN. How long had you known him?
Mr. COURTS. I have known him some 4 or 5 years.
Senator ERVIN. Is he attorney for the State NAACP in Mississippi?
Mr. COURTS. No, sir; he is not.
Senator ERVIN. How did you happen to go to him?
Mr. COURTS. Well, because he was a lawyer there in Jackson and I went to him.
Senator ERVIN. Did you know any other lawyer there?
Is he the only one you knew?
Mr. COURTS. I was not acquainted with any other colored lawyers, and of course I went to a white lawyer in Greenville, Miss., but he would not talk with me. He just would not—told me he just could not take up the case.
Senator ERVIN. This man is D-o-x-e-y?
Mr. MITCHELL. It is C-a-r-s-i-e Hall. I happen to know this man because I was present in the meeting when there was considerable discussion about the number of registered voters. The records were produced down in Jackson.
I might say that the information on the number of Negro votes has been corroborated by testimony of the Governor of Mississippi before the House committee last week. I am reasonably certain if you will look at those records you will see the Governor himself testified about the way Mr. Courts testified as to the number.
Senator ERVIN. What did you say was this lawyer's name?
Mr. COURTS. Carsie Hall.
Senator ERVIN. Is it "K"?
Mr. COURTS. C for Charles, a-r-s-i-e, Hall—H-a-l-l.
Mr. SLAYMAN. Mr. Chairman, the Governor has asked to be a witness and you might wish to ask him that statement for our own record. He will be a witness next week.
Senator ERVIN. Now how many people were in your store at the time that you say you were shot?
Mr. COURTS. Let's see; about 4—4 or 5.
Senator ERVIN. Did all of them live there in Belzoni?

Mr. COURTS. They all lived in Belzoni. You see, I was up to the front. The customer I waited on was up to the front. It was cool and I had a stove back in the back and the other four were sitting back around the stove in the back of the store. Therefore they was not up to the front. Only one customer was up to the front, that was the one I was waiting on.

Senator ERVIN. Whoever shot you shot you through your car, your truck?

Mr. COURTS. Through the window. I had a pickup truck backed down by the window. They shot by but there was a little space, they did not have too much space to shoot by the back end of that pickup truck and 3 of the shots got by and 5 were caught in the back top rim of that pickup truck.

The Sheriff went there and got them. I guess he got them right now.

Senator ERVIN. Did he shoot through the front of the truck where the cab was?

Mr. COURTS. On the back of the truck; back pickup.

You know how a pickup truck is and the shots caught and the sheriff went there and got those five pellets.

It did not go through, 5 of those pellets, in the back just at the top rim back of my pickup truck, and 3 got back and went through the window and hit me.

Senator ERVIN. Is Belzoni the county seat?

Mr. COURTS. That is right.

Senator ERVIN. And there is a hospital in Belzoni about two blocks from where you were shot?

Mr. COURTS. That is correct.

Senator ERVIN. And you were bleeding considerably?

Mr. COURTS. That is right.

Senator ERVIN. And instead of going to the hospital in Belzoni, you went to a hospital in Mound Bayou?

Mr. COURTS. Mound Bayou.

Senator ERVIN. Eighty miles away?

Mr. COURTS. That is right.

Senator ERVIN. Did you receive any medical treatment between the time that you were shot and the time you got to the hospital 80 miles away at Mound Bayou?

Mr. COURTS. No, I did not. I did not receive any treatment. We just went straight on to Mound Bayou Hospital, which did not take—drove it in something like about 40 minutes, I expect, the way he go.

Senator ERVIN. But you did not tie any tourniquet or anything on you to stop the flow of blood? Just let your blood flow freely?

Mr. COURTS. Just let it flow freely until I got to Mound Bayou.

Senator ERVIN. You say you got there in 40 minutes?

Mr. COURTS. I imagine. I don't know whether it was 40 minutes.

Senator ERVIN. You said in your statement—that is 80 miles an hour. You were traveling pretty fast, weren't you?

Mr. COURTS. They were driving fast, I will say that.

Senator ERVIN. So you think you were averaging 2 miles a minute?

Mr. COURTS. I don't know because I was lying down in the back of the car and I don't know how much.

Senator ERVIN. It is your judgment they covered the 80 miles in 40 minutes?

Mr. COURTS. I would not say. I don't know I said. I don't know how long it take me to go, but I know we was not too long before we wound up in Mound Bayou, and the sheriff disapprove of my going to Mound Bayou.

Do you want to know why I did not go?

Senator ERVIN. You have told us. You said you were afraid you would be killed if you went to the hospital at Belzoni.

Mr. COURTS. That is it.

Senator ERVIN. You also undertook to tell—did you intend to say that the White Citizens Council killed Reverend Lee?

Mr. COURTS. Did I say that the White Citizens Council killed him?

Senator ERVIN. I am asking you.

Mr. COURTS. I say I did not say it, did I?

Senator ERVIN. I am asking you what you said.

Mr. COURTS. I have a statement here. I have to go back and read my statement to see what I said. It is just what I said, that is what it is. Here is what I said.

Senator ERVIN. That is what I am asking you.

Mr. COURTS (reading):

The White Citizens Council began to put all types of pressure on the Negroes. We believe they were responsible for the killing of Rev. George W. Lee who was the first Negro in Humphrey County to register to qualify himself to vote.

Now here is what made me believe that: The next morning after he was killed, one of the members of the White Citizens came right in my store and told me this very way; he said, "They got your partner last night."

I said, "Yes, I see you did."

"And you are going to be next if you don't go get your name off the registration book."

Senator ERVIN. That one man spoke to you and on that one statement you condemn everybody and the White Citizens Council of Mississippi as being accessories before the fact to the murder of Rev. G. W. Lee, is that right, in your own mind?

Mr. COURTS. I say we believe it, and another thing, I read a letter that 2 hours before he was killed, Reverend Lee, I read a letter. He called me over to his store. He ran a store. He called me and I went over to the store. He said, "Here is a letter I got." I took the letter up and I read it. It read just like this:

"Preacher, you had better preach the gospel what you were claiming to preach—instead of going around to preach to these Negroes to register to vote."

Senator ERVIN. Are you reading from the letter?

Mr. COURTS. I don't have the letter; I am just reading, but I said I read the letter.

Senator ERVIN. Reverend Lee also ran a store?

Mr. COURTS. That is right. He ran a store too.

Senator ERVIN. You don't know who killed him?

Mr. COURTS. Personally, no, sir.

Senator ERVIN. You were not present when he was shot?

Mr. COURTS. I was not present when he was killed.

Senator ERVIN. Have you heard a rumor in that county to the effect he was killed in that county by another Negro because he and this Negro were going with the same woman?

Mr. COURTS. Yes, they put that rumor down.

Senator ERVIN. That is what they said in that community?

Mr. COURTS. That were a rumor that were put out and of course I know why that rumor was put out because I happen to be there working with him and I know why it was put out and I know who put it out, too.

Senator ERVIN. Well, now, who put it out?

I want to know.

Mr. COURTS. I will tell you who put it out. I will tell you who worked with it. The sheriff called this Negro that is supposed to be an eyewitness to it. When the FBI came down to investigate, they could not find him, nobody did not know where he was. The FBI could not find him. But, however, we got in touch, find out where he was and he was in Memphis, Tenn., and we sent the FBI up there and they talked with him. They went up there and talked with him.

They had already fixed that to the extent and told him exactly, "Stay there and wait for me."

Senator ERVIN. Who was it put out the rumor that Reverend Lee was killed by another colored man because of jealousy over a colored woman?

You said you knew who put out the rumor.

I would like to know his name.

Mr. COURTS. I said this same witness.

Senator ERVIN. Who is he?

Mr. COURTS. The same witness that testified before the Justice Department.

Senator ERVIN. Who is he? What is his name?

Mr. COURTS. I really can't just recollect. I can't recall the fellow's name.

Senator ERVIN. The only reason I am asking you, you said you knew who put out the rumor.

Mr. COURTS. I said it come that rumor from that one supposed eyewitness and I don't know whether he was an eyewitness or not, but what——

Senator ERVIN. This eyewitness, didn't the eyewitness testify to the State Bureau of Investigation of Mississippi to the facts indicating that Reverend Lee was killed by another colored man because of jealousy over a woman?

Mr. COURTS. Yes; that is what they say. I don't know, but that is what they claim he testified.

Senator ERVIN. Did you say you knew?

Mr. COURTS. I said it come from this eyewitness that said this, but I am going from the statement of the letter that he got.

Senator ERVIN. You told me though—now this is another thing you told me as positively as you did about your income tax.

You said that you knew who put out that rumor.

Mr. COURTS. I told you this same witness is the one what said it.

Senator ERVIN. What is his name?

Mr. COURTS. I can't recollect his name right now.

Senator ERVIN. How do you know who put it out if you can't even remember the man's name?

Mr. COURTS. I know the fellow, but I just cannot pull it out. I am going by the Justice Department themselves. They told me what he said.

Senator ERVIN. The Justice Department told you that?

Mr. COURTS. That is right, when they were interviewing me.

Senator ERVIN. Who in the Justice Department told you?

Mr. COURTS. There is one of them down there from Mississippi, from Greenwood, Miss.

Senator ERVIN. Don't you know his name either?

Mr. COURTS. No; I do not know his name.

Senator ERVIN. You put a statement in here to the effect——

Mr. COURTS. I wanted to ask you this: Would you allow me to state why that I said the white citizens council did that, in my brief?

Senator ERVIN. I am perfectly willing for you to state anything on the face of the earth.

Mr. COURTS. O. K. then. I reckon I am the only Negro as I know of that has ever been before the white citizens council committee. They had me before that committee three times.

Senator ERVIN. Who was the committee?

First, were was that?

Mr. COURTS. In Belzoni.

Senator ERVIN. Who was the committee that had you before them?

Mr. COURTS. I can name one of the heads of it, he is Hezekaiah Fly. He is a chairman. Percy Ferr, he is the chairman, member of the white council, and Mr. Paul J. Townes, the president of the Gundy Bank & Trust Co. in Belzoni. Those are the three I went before.

Senator ERVIN. And you went before that committee and they told you they were going to murder somebody?

Mr. COURTS. They did not tell me they were going to murder somebody. Here is what they told me. They told me they were not going to let the Negroes in Humphrey County vote, and they told me they are not going to let the NAACP organization operate in Belzoni. That is what they told me, and asked me if you, the president of the NAACP branch there in Humphrey County, is leading Negroes to register and vote.

"Now we are going to put you out of business."

That is what they told me.

Senator ERVIN. How did you happen to go before the council?

Mr. COURTS. They just sent this same man, Fly, down to my store and told me the white citizens council, "The committee wants you to come before that committee."

I got in his car and he drove me up to the bank in his car.

Senator ERVIN. When was that?

Mr. COURTS. That was—the first time I went to him it was early in 1955. I don't know exactly the date, but it was early in 1955 when the first time was. See, I told you they had me before them three times.

Senator ERVIN. And so because they told you that, why you know they murdered or caused the murder——

Mr. COURTS. I did not say I knew it.

Senator ERVIN. Well, you said you believed it.

Mr. COURTS. Sure.

Senator ERVIN. Yes.

Mr. COURTS. Well, I still believe it.

Senator ERVIN. And everything you believe is the truth, isn't it?

Mr. COURTS. I don't say that. I just said I believe it and I had a reason to believe it because from actually what they was doing it give me that belief, because they told me, he was a member of the citizens council.

When I went before that committee they did not make any threats. I am not going to say they did but personally when he would come to my store and talk with me, that is when the threats was made between me and him and I don't have any way of proving it.

Senator ERVIN. Who is Mr. Fly?

What is his business?

Mr. COURTS. He is a planter.

Senator ERVIN. Does he live in Belzoni?

Mr. COURTS. He lives just out from Belzoni. He is a planter.

Senator ERVIN. Were these other men planters?

Mr. COURTS. One of them were, Mr. Ferr, also a planter.

Senator ERVIN. What is the other one?

Mr. COURTS. He is a banker there in Belzoni.

Senator ERVIN. He is a banker in Belzoni?

Mr. COURTS. That is right.

Senator ERVIN. What county is Belzoni in?

Mr. COURTS. Humphrey County.

Senator ERVIN. What section of Mississippi is that in?

Mr. COURTS. Well, in the Delta section.

Senator ERVIN. You say there have been a lot of Negroes found in rivers. Do you mean a lot of colored people have been murdered and thrown in the rivers?

Mr. COURTS. They were found in rivers and the indication is they were murdered.

Senator ERVIN. I wish you would tell me where the bodies, with the exception of Emmet Till, tell me where the body of any Negro was found in the river in Mississippi.

Mr. COURTS. Well, it was a Negro there in 1955. Mr. Mitchell, did you get that? You have a record of that Negro that was found up there.

Senator ERVIN. You need not ask him.

Mr. COURTS. He is my adviser here and I have a right to ask him, don't I, because I did not record that down here. I can testify what I record, but I do know they got him out of the river, out of the lake.

Senator ERVIN. You made a statement here that there have been a lot of colored men found in rivers.

How many is a "lot"?

How many does the word "lot" mean?

Mr. COURTS. We have a statement here we know that in 1955, we know of two.

Senator ERVIN. How many is a lot?

Mr. Courts, what do you mean by the term "lot"? Does it mean 2 or 500 or what? It is sort of a vague and indefinite term.

Did you ever see the body of any colored man taken out of a river in Mississippi other than people that were drowned, in your life?

Mr. COURTS. Well, now, Mr. Ervin, the Till boy and this other fellow that I am telling you about was taken out. I was not right there when that body—I saw the body but I was not there when it was

taken out of the river but in any case it was taken out. I was not there and saw it.

Senator ERVIN. I wonder why you make charges like that if you don't see them. I want to know this: How many bodies of colored people have you seen taken out of rivers in Mississippi other than the bodies of people who were drowned?

Mr. COURTS. Well, I told you personally I was not standing there looking at them when they took the bodies out.

Senator ERVIN. I am asking you though, have you ever seen any of them?

Mr. COURTS. I was not there and saw it but I do know just like this Till boy and just like this other body was taken out of the lake there, it was taken out. I saw the body after it was taken out of the river. I went and saw the body and looked at it but I was not there when they took it out.

Senator ERVIN. How many bodies of colored people have you seen taken out of a river, how many bodies of colored people that you know of have been taken out of rivers in Mississippi?

Mr. COURTS. I can say that I saw two bodies that was taken out. That is all that I personally saw there. Of course I am not going to go out and say what I read in the paper. I am talking about what I saw. I saw these two bodies.

Senator ERVIN. One of them was the Till boy?

Mr. COURTS. That is right.

Senator ERVIN. And the other was in 1955?

Mr. COURTS. In 1955, yes.

Senator ERVIN. And where was the one in 1955?

Mr. COURTS. One was taken out of the Tallahatchie River.

Senator ERVIN. What county?

Mr. COURTS. That was in Tallahatchie County, I believe it were, yes.

Senator ERVIN. How far is that from your home, Belzoni?

Mr. COURTS. Oh, it is about 60 miles.

Senator ERVIN. About 60 miles?

Mr. COURTS. Something like that, approximately, not exactly.

Senator ERVIN. What was his name, do you remember?

Mr. COURTS. What did you say?

Senator ERVIN. What was his name?

Mr. COURTS. Who?

Senator ERVIN. The one you saw in Tallahatchie County.

Mr. COURTS. That was the Till boy. I went up there and saw him.

Senator ERVIN. Excuse me, I intended to ask you about the other one. What was the name of the other one? The Till boy was taken out of the Tallahatchie River in Tallahatchie County. Now who was the other man's body that you saw?

Mr. COURTS. That was—of course he was taken out of a river. Not out of a river, it was a lake, a lake of water, and he was taken out of that water and of course I went and saw that body.

Senator ERVIN. What lake was that?

Mr. COURTS. I could not recollect the lake.

Senator ERVIN. What county was it in?

Mr. COURTS. I could not say exactly being frank about it, because if I say I am not too sure as to what county it was in.

Senator ERVIN. How far——

Mr. COURTS. It was not as far, the lake, from where I lived, but I don't know where, I think it was in LeFlore County. I think it was. I am pretty sure. I saw the body.

Senator ERVIN. Was the body in a home or a funeral home?

Mr. COURTS. It was in a funeral home.

Senator ERVIN. Was the funeral home in a town?

Mr. COURTS. Sure it was in a town.

Senator ERVIN. And you cannot remember the name of the town?

Mr. COURTS. I remember the name of the town.

Senator ERVIN. What was the town?

Mr. COURTS. Indianola, Miss.

Senator ERVIN. How do you spell that?

Mr. COURTS. I am not a lawyer now and I want you to understand that. I will have to ask Mr. Mitchell to spell it for me.

Mr. MITCHELL. Mr. Chairman, I think it would be helpful if I could say that this witness is not familiar as very few people would believe, with the proceedings of the Senate. I want to assure you that he is making a desperate effort to give you a factual and truthful account. I also want to assure you that knowing him as I do, than anything he says as a matter of fact, if you have any doubt about it, I will be glad to gather the information which will substantiate the statement and present it for the record of the committee, any question that you would like to have substantiated.

Senator ERVIN. I assume that what he states as facts is something that he contends he knows to be facts. If he does not, why——

Mr. MITCHELL. That is not correct, Mr. Chairman.

I would say with all respect that it is a very, very difficult experience to see this man, who is an American citizen, who has been shot and who has been exposed to a chain of events that apparently started because he was seeking the right to vote, be subjected to the kind of cross-examination which unhappily may make his story look like it is not as heartrending as it is.

Senator ERVIN. It is a very heartrending thing to me when a man comes here who says he is a minister of the Gospel and makes a statement on oath before a Senate committee to the effect "there have been a lot of Negroes found in rivers—others just killed in broad daylight."

And I do not think it is a very severe cross-examination to ask him how many Negroes he claims have been found in rivers.

Mr. MITCHELL. I would be happy to submit to the committee——

Senator ERVIN. You are not the witness, though, you see.

Mr. MITCHELL. That is just why I prefaced what I said. I think, Senator, you want to get at the facts and I want to help get at the facts but I want to take into consideration that here is a witness who is trying hard to be helpful but at the same time would have great difficulty in testifying on things that he is not prepared to testify to in any great detail.

He is prepared to testify on anything with reference to his personal experience and what is happening in that county.

Senator ERVIN. It has been a week and a half ago since he made up his statement at least.

Mr. COURTS. That is correct.

Senator ERVIN. And he has made an assertion in here which in effect is charging numerous people in the State of Mississippi with murders, and I am just trying to find out who it is he claims has been

murdered outside of the Till case, and he has told me one other man.

Now if he does not know but two people, two does not make a lot in my understanding of the dictionary, and I submit that a man ought not to come before a committee and make statements which are intended to imply that vast numbers of the colored race have been murdered and thrown in rivers in Mississippi, unless he can substantiate his statement.

Can you name any others than those two?

Can you specify any others than those two? I don't want to belabor this now.

Mr. COURTS. I told you I could not just go out and specify. I know this: I know that there have been many ones that I know, I know personally some that were just killed. Of course now they were killed claiming this and that and all these things but still they were killed, just like I was shot, just like Reverend Lee was shot, just like as I mentioned here, Lamar Smith was shot at the courthouse.

Senator ERVIN. Lambert Smith?

Mr. COURTS. Lamar Smith at Brookhaven, Miss.

Senator ERVIN. Brookhaven, Miss.

Mr. COURTS. That is right.

Senator ERVIN. I will ask you again if you will give me a responsive answer to the question and I will leave this phase of it.

Do you mean to testify that you know of any colored people that have been murdered and thrown in rivers in Mississippi other than the Till boy and this man in 1955?

Mr. COURTS. Well, I said those were two that I personally knew about because I had, as I said, the only thing that I could go by was what I just saw with my eyes. I knew I saw this body. I saw both of those bodies and that is all I am attempting to testify to, what I saw with my eyes.

Senator ERVIN. Is that what you meant to cover your statement that there have been a lot of Negroes found in rivers, those two—those two were the people you referred to in your statement "there have been a lot of Negroes found in rivers"?

Mr. COURTS. I think as I said, I could go to the record and prove that there have been, but I do not have the record here and that is why I am refusing to testify on the ground that you are going to demand me to know and I would have to get the record on it, and I don't have and that is why I refuse——

Senator HENNINGS. Senator, may I suggest then that the witness be permitted to get such records as may be available to him?

Senator ERVIN. The only trouble, Mr. Chairman——

Senator HENNINGS. Assuming that they are properly substantiated in affidavit form.

Senator ERVIN. I might want to cross-examine about that, and as I understand it on the fifth the hearings end, and I need to find this out now.

Senator HENNINGS. I did not mean to suggest for a moment that the Senator could be foreclosed or should be from any examination of the witness, but I was wondering if the Senator would have any objection to the witness submitting such documentary evidence as such affidavits as he may care to do for the record and for what they may be worth.

Senator ERVIN. I would not accept it if they were submitted at such a late date that I could not have a chance to check on the things, I would have to have them submitted when I could check on them.

Now I will go back to my question which I think is very simple.

Senator HENNINGS. At any rate, Senator, I think the proper ruling would be that nonetheless granting that you have every right to cross-examine on every phase of the statement, you can examine this witness upon every phase, cross-examine and interrogate him, I do think it would be proper for him to submit such statements as he may care to submit to be taken into consideration by the committee for what they are worth.

We can't foreclose his submitting statements in such form as he may desire to submit them, and if there is grave reason to doubt or any reason whatsoever for the committee to doubt the validity or truth of these statements, then the committee will accept them and receive them under such conditions as the committee desires.

Senator ERVIN. Certainly I have got no objection to that. You were asking me whether I would object to them personally. The committee has got the authority to do whatever it pleases.

Senator HENNINGS. I was not going to foreclose the Senator's examination. The Senator has every right to examine on every phase of any part of this question.

Senator ERVIN. Reverend Courts states here in his statement, and I quote:

> There have been a lot of Negroes found in rivers.

Now when you put that in your statement, you intended that to cover the Till case and the case you mentioned in 1955, didn't you?

Mr. COURTS. Sure, those are the two that I could just personally without a record—I can get the record if you will allow me to do it, but I have, I do know about that because I did view those two bodies that were taken out, and so said that they were murdered.

Now it was another one so far as that comes and a woman. That was in 1955, too, and it was so said that she was murdered. Of course I did not see the body.

Senator ERVIN. Where did that happen?

Mr. COURTS. That was at Glendora, Miss.

Senator ERVIN. Glendora?

Mr. COURTS. Glendora, Miss.

Senator ERVIN. Glendora—Where is that?

Mr. COURTS. In the delta section.

Senator ERVIN. You don't know anything about that except the rumors you heard?

Mr. COURTS. I know this woman was taken out of the lake, I know that.

Senator ERVIN. You never saw her taken out of the lake?

Mr. COURTS. Just like I am saying, I did not see it, but she was taken out of the lake.

Senator ERVIN. It is three then that you claim?

Mr. COURTS. Those three were in 1955.

Senator ERVIN. Now tell me somebody—the Till boy was not allegedly murdered in connection wtih any alleged election laws; was he?

Mr. COURTS. I don't think so.

Senator ERVIN. It did not have a thing whatever to do with registration or anything of that character?

Mr. COURTS. I don' think so. I don't know.

Sentor ERVIN. And the man in 1955, from the rumors you have heard, did that have anything to do with any election case?

Mr. COURTS. Yes, sir; I think so, for the fact that he was one too in LeFlore County. He was active in trying to get Negroes to register to vote. He was a schoolteacher.

Senator ERVIN. Has anybody ever been apprehended for his murder or charged with it?

Mr. COURTS. Sure hasn't.

Senator ERVIN. You have got an estimate here to the effect that others were just killed in broad daylight.

Who do you know that was killed in broad daylight except Lamar Smith?

Mr. COURTS. Well, I could call another Negro that I personally know too——

Senator ERVIN. What is his name?

Mr. COURTS. That was killed. He was killed in Belzoni and one was killed—of course he was killed like this: the fellow that killed him claimed that he was in a truck—that was in Humphrey County, too. That was in 1955. The fellow that killed him, don't nobody know who killed him because the man who killed him went on off, but he shot him because he claimed he ran into him in a car or something. He got a gun and killed him and went about his business.

Senator ERVIN. If that murder happened as you heard, it was wholly apart from any election business. He got mad——

Mr. COURTS. Just wait now, let me tell you about this. He, too, was a registered voter in Humphrey County, and he was a planter, and they had asked him to take his name off.

He, too, refused to take him name off and they refused to gin his cotton and he taken his cotton across in another county to gin and when he was coming on back someone killed him.

Senator ERVIN. You say the man in that case killed him because they had an automobile wreck?

Mr. COURTS. I said they claimed it was an automobile wreck; that is what I said.

Senator ERVIN. As far as you know, that may be the truth.

Mr. COURTS. He was shot. That fellow claimed he ran into him and he got out and killed him. He was shot. It was not the wreck that killed him.

Senator ERVIN. The man was tried in that case, wasn't he?

Mr. COURTS. No, he was not tried, he was not tried.

Senator ERVIN. The man admitted he killed him on account of an automobile accident.

Mr. COURTS. Didn't you hear me say that they said they did not know who did it? Didn't I state that in front?

Senator ERVIN. I did not understand you to so state.

Maybe you did.

Mr. COURTS. That is exactly what I said.

Senator ERVIN. I am not going to controvert that.

Mr. COURTS. Isn't that what I said?

I said that they claimed that it was some kind of wreck. Well, the fellow that shot left the scene after he shot him. He went on

and nobody don't know who shot him so far as that goes. That is what I said.

Senator ERVIN. And the statement was made——

Mr. COURTS. But here is what I am saying. He had been warned just like I was to take his name off the registration book and he did not do it. When he went to gin his cotton they refused to gin his cotton in Humphrey County anywhere. He could not get his cotton ginned so he went across to another county——

Senator ERVIN. You told me that. It is down on the record there.

Mr. COURTS. To gin his cotton. When he was coming back home he was killed and nobody don't know who killed him.

Senator ERVIN. You say it was rumored in that case that the man who killed him killed him on account of the fact that they had an automobile accident?

Mr. COURTS. That is what they said. But from his truck it seemed that it had been a little accident there. That is what had happened, but the man that done the killing left the scene and they don't know who did it.

Senator ERVIN. What is his name?

Mr. COURTS. His name is—the man what got killed?

His name is—I will think of his name directly. Would you allow me, I would have to get that from the record.

Senator IRVIN. That is all right.

Mr. COURTS. I can get it.

Senator ERVIN. That was in Glendora?

Mr. COURTS. No, no, that was in Humphrey County, the one I am talking about now, the one I am talking about was killed.

Senator ERVIN. You don't remember the man's name in Glendora?

Mr. COURTS. I don't remember his name.

Senator ERVIN. And this man lived in your county?

Mr. COURTS. Yes, he lived in the county. He lived in the county there. I can get that record.

Senator ERVIN. All right, any others?

Mr. COURTS. Well, I think that is four there.

All this happened in 1955, that is all, in compliance with my statement here in 1955.

Senator ERVIN. That is Lamar Smith?

Mr. COURTS. Yes, sir.

Senator ERVIN. And the man at Glendora?

Mr. COURTS. That is right.

Senator ERVIN. And the man in your county, the third one?

Mr. COURTS. That is right.

Senator ERVIN. You have no knowledge whatever as to who killed Lamar Smith or as to who killed a man in Glendora or who killed the third man that you mentioned?

Mr. COURTS. No, sir; I do not. I could not say because I can't say who shot me, can't say who killed Reverend Lee. I know he was killed; that is all.

Senator ERVIN. I thought you said—I don't know whether I misunderstood you—I thought you said the county seat is Belzoni?

Mr. COURTS. It is Belzoni.

Senator ERVIN. You have a reference in here "A few days later, on Saturday, October 13, 1955, Lamar Smith was called to the courthouse at our county seat in Brookhaven."

Mr. COURTS. In Brookhaven; that is right.

Senator ERVIN. You did not live in Brookhaven?

Mr. COURTS. No, sir; I did not, sure didn't.

Senator ERVIN. And how far is it?

In other words, I just misconstrued it. You said "Our county seat, Brookhaven."

You did not mean to say that was the county seat of your county?

Mr. COURTS. No.

Senator ERVIN. How far is it from Belzoni to Brookhaven?

Senator HENNINGS. Senator, I am sorry to disturb you.

As the Senator knows, there have been no permissions given for committees to sit during the sessions of the Senate, and we have now reached the hour of 24 minutes to 12.

Senator ERVIN. I have been going ahead in violation of that rule and nobody has objected.

Senator HENNINGS. Nobody would object I assume, except that these are live quorum calls where members must be there to answer for themselves.

Senator ERVIN. I am perfectly willing to come back.

Senator HENNINGS. Under the agreement, as the Senator knows, these quorum calls are live quorum calls and every Senator must be there to answer individually to his name.

Senator ERVIN. I will be glad to request that we have permission to sit during the session or I will be willing to sit without permission so far as that is concerned.

Senator HENNINGS. We might go to the floor and see what can be worked out.

Senator ERVIN. I don't want to inconvenience these folks. I don't want to have to have them come back.

Senator HENNINGS. We are compelled to go to the floor of the Senate for the time being while the Middle East resolution is being debated.

We shall return as soon as we can.

(Short recess was taken.)

Senator ERVIN. The committee will come to order.

I have no further questions.

Mr. SLAYMAN. May I ask a couple of questions, Mr. Chairman?

Senator ERVIN. Yes.

Mr. SLAYMAN. Mr. Courts, there are just a few of these things we would like to have at one place in the record, because we will be working from a record which is getting rather voluminous with testimony.

From your firsthand knowledge, you have testified that you were registered as a voter in Belzoni, Miss.?

Mr. COURTS. That is right, but could I add to you that since I did not tell what I had to go through with to get to be registered, could I add to that, what I did?

Mr. SLAYMAN. That is up to the chairman.

Senator ERVIN. I have no objection.

Mr. COURTS. You know I said in my statement here that they had refused to let us qualify.

In Mississippi you have got to pay $2 poll tax. Then you go to the registrar and register. Then when you do that you are qualified to vote. He refused to do so. Myself and 3 or 4 others signed an affidavit against the sheriff and had him brought before the Federal

grand jury and they forced him to open up the books and let us pay poll tax. That is why I got a chance to register.

Now, the sheriff had it in for me and he had it in for—Reverend Lee was the one that signed and I was the one that signed it, and of course he had it in with Reverend Lee because he said, "You tried to put me in the penitentiary."

Reverend Lee said, "I did not try to put you in the penitentiary." He said, "I just want my right to vote."

He said, "That will be all right, I will get you."

Mr. SLAYMAN. Did you hear him say this?

Mr. COURTS. Reverend Lee told me that. I was not present. All these conversations when they were there were discussed, they were discussed individually with you and they don't let any witness be around.

Mr. SLAYMAN. Mr. Courts, I want you to know I did not know what you were going to say there in elaboration. I wanted to be attempting for my own information, since I am going to be working on this record, to conform to an interest that the chairman has shown, that we distinguish certain of these things that are alleged to be facts as matters that are firsthand knowledge to you, things that might be known by you to the best of your knowledge and belief, and that you believe to be so, and then other things that you would quite frankly, I think, even though we have not asked that you respond as a lawyer yourself, that you would recognize that certain other things are obviously rumors.

Returning to the question of your own registration, you know that—excuse me, had you finished?

Mr. COURTS. Yes, I had finished.

Mr. SLAYMAN. Then you know that you were registered?

Mr. COURTS. That is right.

Mr. SLAYMAN. Do you know of firsthand knowledge that the Reverend Lee was registered?

Mr. COURTS. That is right.

Mr. SLAYMAN. You do know that?

Mr. COURTS. I know that.

Mr. SLAYMAN. That he was registered. And you know——

Mr. COURTS. And I have a reason to know, the reason I know so good about Reverend Lee, Reverend Lee and myself went to the sheriff's office and paid our poll tax together. We walked on to the registrar's office and he registered first and I registered next. We were together when we registered.

Mr. SLAYMAN. I want you to be truthful about your answers so that you understand what I am asking you.

Do you know of your own firsthand knowledge that Reverend Lee was killed?

Mr. COURTS. I know he was killed.

Mr. SLAYMAN. How do you believe he was killed?

Mr. COURTS. Well, I think I made that statement. Two hours before he was killed, I made that statement he called me over to his store and he showed be a letter that he had which was sticking in his store that moment when he got up he said it was sticking in his screen door, and it said, "Preacher, instead of you preaching the Gospel, what you say that you were called to do, you are preaching to Negroes here in Humphrey County to register and vote. You had

better do what you claim that you were called to do, that is, preach the Gospel."

That is what was on the letter.

He showed me the letter and I read it. That was 2 hours before he was killed.

Mr. SLAYMAN. After he was killed, do you have any knowledge of your own that prosecution was started against any person for the death of Reverend Lee?

Mr. COURTS. Not that I know. There hasn't been anything done so far as I know because in the first place they have not found out as who killed him. Therefore there has not been anything.

Mr. SLAYMAN. In the first place, then, do you know whether the local law enforcement officers conducted an investigation?

Do you know of your own knowledge whether they did?

Mr. COURTS. Yes, sir. I was right there with them.

I was about the third man that got there after he was——I was there before they got him out of the car, before they got him out of the car I was there because it is just one block above my store and I was there.

The sheriff came to investigate. Now when he was shot, his car went out of control and went into a house and went on up, knocked the wall down, the porch down, went on into the house and turned the lady's bed down. When we got there his jaw was just torn all to pieces here. The sheriff and the doctor was there. The sheriff says that wreck killed him. They said a 2-by-4 rammed through the windshield and killed him. There was not any hole in the windshield. The 2-by-4 when it went upon the porch it caught a swing. It shattered it but it did not knock a hole in it but it held that swing just in front of the windshield, but the car went up and knocked the wall down and went up into the house.

Now the sheriff said it was a 2 by 4 that rammed through the windshield and jabbed him. Of course they was trying to just say that it was an accident. O. K., I called his wife. I said, "Listen, you see what the sheriff is trying to do there? Why don't you call in, go to the sheriff and ask him would he allow you to call in another doctor to examine Reverend Lee," so she asked the sheriff and he said, "Yes, if you want to, yes."

So that put the inquest off until the next day. She called in two doctors, one a dentist, Dr. McCoy, from Jackson, Miss., and Dr. Battle, a medical doctor from Indianola, Miss., colored doctors.

Also the doctor from Belzoni, also initiated, and they all were there. Dr. Battle went down on his jaw and he comes to pulling those pellets out, you know, little leads out of his jaw. The doctor say that it is just fillings from his teeth.

Dr. McCoy say, "Oh, no, that is not filling from his teeth. I am a dentist and I know. That is lead."

Mr. SLAYMAN. Did you hear the doctor say that?

Mr. COURTS. I was standing there.

Mr. SLAYMAN. You heard them say that?

Mr. COURTS. I was standing there at the inquest, right there, looking at him and listening. I was at both inquests.

Okay, the sheriff say, "Well, we will send this to Washington to have it analyzed and see whether it is lead or what it is," and when it came back it was No. 3 buckshot.

Mr. SLAYMAN. How do you know that?

Mr. COURTS. Well, now, that is the statement. Even the sheriff himself said that. They brought the statement out.

Now they changed it and then they decided, then he was killed.

Now the question was, Who killed him?

Mr. SLAYMAN. I will ask you again what prosecution for his death do you know has taken place?

Mr. COURTS. Not any.

Mr. SLAYMAN. In that county?

Mr. COURTS. Not any.

Mr. SLAYMAN. How long ago was he killed?

Mr. COURTS. He was killed May 7, 1955.

Mr. SLAYMAN. With respect to the assault on yourself, I am trying to get something clear for the record. I will tell you a rumor I hear: One argument against Federal civil rights legislation is that there is absolutely no necessity for it because local law-enforcement officers are adequately handling all matters involving violations, alleged violations, of voting rights and alleged criminal activities.

With regard to yourself, of your own first-hand knowledge you know you were assaulted by being shot with a shotgun, is that correct?

Mr. COURTS. That is correct, and may I add just to prove the facts on that, now the Justice Department have the record. On August when we was to go down to vote I was threatened to not come down. I signed a petition.

Mr. SLAYMAN. You were threatened?

Mr. COURTS. Not to come to the courthouse to vote.

Mr. SLAYMAN. And you have told us the name of the person?

Mr. COURTS. Sure I told you, Percy Ferr, he is a planter and he is a member of the White Citizens Council. I told you who his name was. He brought this personally to me and we signed a petition and sent it to the Governor.

We sent a copy of the same petition to the Justice Department here in Washington for protection for us to vote because they had said they was going to——

Mr. SLAYMAN. This is prior to your being shot?

Mr. COURTS. Yes, sir; that is right. Let me finish.

Let me bring this out to tell you the results of it. The Justice Department, I am sure they have the record. They have a copy of the petition, I am sure they do because we sent it to them. Of course they had no authority to intervene into it I suppose.

Now the Governor sent that petition back to Belzoni to the White Citizens Council. They took that petition, there were five Negroes that signed that petition. They take it to every one of them, to four before they came to me, say "You signed this petition and sent it to the Governor."

They say, "Why did you do that?"

I said "Well, the reason we did was because we were threatened and I signed that petition and sent it to the Governor because I thought that was the proper thing to do."

"Well, now, that was not the proper thing for you to do. Now you have signed this petition and sent it to the Governor. Now you see how much protection you have gotten from the Governor."

Mr. SLAYMAN. Who are you quoting now, Mr. Courts?

Senator ERVIN. He is testifying to some stuff that he could not possibly know unless he had charge of the Governor's letters. He testified the Governor mailed it back to the White Citizen's Council.

Mr. COURTS. I say they got it.

Senator ERVIN. They might have gotten it in the newspapers. I read a lot about it in the newspapers in North Carolina. I don't think the Governor of Mississippi would mail it back to the White Citizens Council, and I don't believe you know that he did.

Mr. COURTS. I could not say that I knew it. I am talking about what they brought the paper to me, that is what I say. I don't know that he did it.

Senator ERVIN. You stated he did though.

Mr. COURTS. I am quoting what they said. I am quoting what they told me. Wasn't that all I could do?

Mr. MITCHELL. Mr. Slayman, I think I can straighten it out just a little. I have talked with Mr. Courts about this.

This petition was sent to the Justice Department and to the Governor. They never heard what happened to the Justice Department version, but the copy which went to the Governor of Mississippi in some way eventually got back to Belzoni.

Mr. COURTS. That is right.

Mr. MITCHELL. Mr. Courts knows it got back because this Mr. Ferr came to him, showed him this statement and asked him to identify his own signature on it, so it was not just something they got out of the newspapers.

Now the mystery is how it got back there.

Mr. COURTS. Yes.

Senator ERVIN. He has testified the Governor of Mississippi sent it back to the White Citizens Council at Belzoni.

Mr. COURTS. Yes.

Senator ERVIN. Which is an assumption he could not know.

Mr. COURTS. If I sign a paper you know I know my handwriting. He says "Did you sign this?"

That was my signature thereto. I said "I sure did."

Mr. SLAYMAN. This was the same copy?

Did you recognize the copy?

Mr. COURTS. I would not say it was the same copy because it was in print and I naturally would not say it is.

Mr. MITCHELL. But your signature was on it?

Mr. COURTS. But my signature was there. That is what I am saying. My signature were there.

Mr. SLAYMAN. Mr. Courts, with regard to the assault on you, will you tell us what you know of your own knowledge of what prosecution for this criminal, alleged criminal, attack, has occurred in that county?

Mr. COURTS. Not a thing, has not been a thing.

Mr. SLAYMAN. What was the date of that attack?

Mr. COURTS. On myself?

Mr. SLAYMAN. Yes.

Mr. COURTS. November 25, 1955.

Mr. SLAYMAN. And to your knowledge there has been no criminal prosecution?

Mr. COURTS. Nothing so far as I know, not a thing.

Mr. SLAYMAN. You were asked earlier if you had heard a rumor to explain the assault on Reverend Lee that there had been another colored man who had shot him, and if I recall correctly, you testified that you had heard that rumor?

Mr. COURTS. Oh, yes.

Mr. SLAYMAN. Did you hear any such rumor to explain, to attempt to explain, the attack upon yourself?

Mr. COURTS. You mean——

Mr. SLAYMAN. Specifically, what I am asking you is in one case you testified that you knew of a rumor which purported to explain how Reverend Lee was killed. You have said yes, that you heard that rumor.

Mr. COURTS. That is right.

Mr. SLAYMAN. So, secondly, in this connection I am asking you, have you ever heard of any rumor that would purport to explain how you were attacked?

Mr. COURTS. Well, I sure have, and I think I will quote the words, and I was lying in the hospital. The first time the Justice Department came up and interviewed and got my statement, they went back to Belzoni. The next day they came back to me with a statement and they said on the 25th, just after Thanksgiving, they said, "Courts, now the reason why that this came about," one of the members of the White Citizens Council, he told me just 3 days before I got shot, he told me this: "Courts, they are planning to getting rid of you. I don't know how and I don't want to know how."

He is a white man that runs a filling station just a block from my store, and I did not question him either.

But now when the Justice Department visited me I give them that statement. He went back to him. He denied telling me that. And then he told them this statement so they brought this statement back to me in the hospital. He said "Courts, on November 24 you went to Mr. Regen's filling station and had your truck filled up again."

I said, "Yes, I did."

He said, "Well, you went somewhere on November 24 and you carried a woman somewhere." I said I did. He said, "Who was the woman that you carried?"

I said, "My wife."

He said, "Where did you go?" I said, "We went to Tula, Miss., to visit her sister and I brought her sister back home and she was there in the store when I got shot," and he just laughed.

He said, "Well"—I am talking to the Justice Department now.

He said, "Well, that is just it."

He looked at the other one with him. He said, "That is just it. We don't have anything to go by." I explained that. I want to show what they tried to say with me. They tried to say if I did not have my wife with me, they would have said that I carried a woman off and tried to fix that just like they did Reverend Lee, and if it had of happened that I have gone by myself and had not with my wife that is exactly what they did but having had my wife with me, that killed that.

Mr. SLAYMAN. I have just 1, maybe 2, more questions for you.

Do you know of your own knowledge that there was ever any attempt made in that county to prosecute this rumored other colored man for the attack on Reverend Lee?

Mr. COURTS. No, sir; no arrest or nothing.

Mr. SLAYMAN. You don't know of your own knowledge?

Mr. COURTS. No, sir; has not been.

Mr. SLAYMAN. Do you know of any attempt to prosecute anyone for the attack on yourself?

Mr. COURTS. No, sir.

Mr. SLAYMAN. There is one more question with regard to questions about your Federal income tax.

Have you any knowledge yourself—this is not that of your accountant or bookkeeper or lawyer or anyone who might have been keeping your books for you—have you any knowledge yourself that the Federal Government—that is, either the Criminal Division of the Department of Justice or the Internal Revenue Service—has made any investigation of your payment or nonpayment of Federal income taxes?

Mr. COURTS. No, sir; never has.

Mr. SLAYMAN. I don't have any more questions.

Senator ERVIN. So far as you know, nobody saw Reverend Lee killed, except the man who did it?

Mr. COURTS. Insofar as I know, because I was not up there, but now I did hear, and as I told you this was a rumor, there was a man there they claimed—and I don't know whether this is true or not, I could not say, that did see him and did know, he knew who shot him.

There is two rumors out if you are going to go by rumors but I am not going to go from rumors because if I go from rumors, the rumor was the sheriff killed him.

I am just telling you that if you go from the rumors now——

Senator ERVIN. That is one trouble about this whole business. It is sort of based on rumor. But you never saw the sheriff kill him?

Mr. COURTS. Sure I did not, I did not see him when he killed him but I know this one thing: He had enough, he was angry enough with him because he had signed that affidavit and had him before the Federal grand jury and that is something that no Negro in Mississippi as I know of had ever did, and that was enough to spur him up to want to kill him.

Senator ERVIN. You can invade the minds of other people and tell what is there about as well as anybody I have ever seen.

As far as you know, there is no human being knows who killed Reverend Lee except the man that killed him; isn't that so, as far as you know?

Mr. COURTS. So far as I know, you are right.

Senator ERVIN. And you have testified yourself that you did not know who shot you, though?

Mr. COURTS. I don't.

Senator ERVIN. And that the witnesses that were present in your store told you they did not know?

Mr. COURTS. That is right.

Senator ERVIN. And neither the State officials nor Federal officials can prosecute people for crimes unless they have some evidence as to who committed the crimes; can they?

Mr. COURTS. O. K., if somebody is out there and kills a man, I have the car number here in my pocket. I gave it to the Justice Depart-

ment. That is all I could do. I give the number of the car. That is all I could do. I did not get that myself but someone else was an eyewitness out there and saw that and taken it. I give that to the Justice Department but I have not heard a thing from them.

Senator ERVIN. In other words, you are not able to identify the person that shot you?

Mr. COURTS. Sure not. Did I say so?

Senator ERVIN. And your witnesses told you that they could not see who shot you, and you know this: That the Federal Bureau of Investigation came down there and talked to you and investigated this matter, your shooting; don't you?

Mr. COURTS. That is right.

Senator ERVIN. And you know that if the Federal Bureau of Investigation found out anything about who shot you or who shot the Reverend Lee, don't you think it is reasonable to assume, since we are doing a lot of assuming, that they would have communicated that fact to the proper officials of the State of Mississippi?

Mr. COURTS. They did do it if I understand. In fact, they told me that they did but they said they did not have any jurisdiction——

Senator ERVIN. That is right.

Mr. COURTS (continuing). To intervene in these cases, but they got the evidence and turned it over to the State, I mean for prosecution, and they have not did it.

Senator ERVIN. You don't know the evidence that the FBI turned over to the State——

Mr. COURTS. I sure don't; but they got the record.

Senator ERVIN. They got the record, but you don't know what the record shows?

Mr. COURTS. I don't.

Senator ERVIN. And you know that if the record fails to disclose the identity or the probable identity of any person as a person who assaulted you or the person who killed Reverend Lee, that no prosecution could have been instituted; don't you?

Mr. COURTS. I know this—in the State of Mississippi I know this: It does not make any difference what the evidence shows. In the State of Mississippi, when it comes to prosecute, they weren't going to do it.

Senator ERVIN. You know that?

Mr. COURTS. I know that from past experience. I put up 60 years in the State of Mississippi, and I should know.

Senator ERVIN. You also know that immediately after you were short, that you reported all of these things you have told us about to the United States Department of Justice; don't you?

Mr. COURTS. Absolutely; that is right.

Senator ERVIN. If you don't know it I do know it, that if your statement is true, that the Department of Justice had ample cause to prosecute several persons in the Federal courts of Mississippi for violations of civil-rights statutes now on the books, interfering with your right to vote; and you also know, or so far as you know rather, the Department of Justice has not issued or started any prosecution in the Federal courts in Mississippi.

Mr. COURTS. The only thing that I know, the Justice Department, the evidence that they got, they said they did not have the jurisdiction

to bring anybody, to arrest anybody or prosecute anybody. But they turned that over to the State for prosecutions.

Senator ERVIN. Suppose you tell me whether you have any knowledge that would justify anybody prosecuting anybody for shooting you; that is, identifying any persons.

Mr. COURTS. There is lots of things that happened, that do happen all over the State. I noticed lots of things, crimes that are committed; the Justice Department gets in there, and they find the ones that did it and they bring them to prosecution. They find them, but in Mississippi they never have been able to so far as I know; they have not been able to do it in the State of Mississippi.

Senator ERVIN. You can't give us any information now. You have no knowledge, and apparently, there is not a scintilla of evidence, to identify any person either as the person who assaulted you or as the person who killed Reverend Lee; is there?

Mr. MITCHELL. Mr. Chairman, the Justice Department made an official announcement, which was published in the papers, and that can be obtained, with reference to the Lee case, in which they indicated they had uncovered some evidence which they had turned over to the Mississippi authorities, and apparently the Mississippi authorities did not use it.

The other aspect in this case—it seems to me if I were a policeman and I had the license number of a car and I had a witness who said that she saw some people who were white in an automobile, I would start an investigation; and if I were a good policeman I think I would have a reasonable chance of getting the guilty party.

Senator ERVIN. I have known a lot of people who were unable to make out a case because of various things.

Frankly, I cannot get things from the FBI, and I don't guess you can either. As a matter of fact, the Attorney General comes up here and testifies on the basis of FBI reports and then withholds those FBI reports from this committee. One other question, Reverend Courts, I meant to ask you before. How far is it from your home to Brookhaven? I am not as familiar with Mississippi geography as I should be.

Mr. COURTS. I could give you approximately; I could not just say definitely. I could just say, approximately about 80 miles. It could be a little under or a little over, but it is approximately that.

Senator ERVIN. That is as good as I could do about a lot of places in North Carolina.

That is all.

Mr. COURTS. Thank you, sir.

Senator ERVIN. Rev. W. D. Ridgeway is scheduled as the next witness. Since Attorney Walden was here some days ago and did not have an opportunity to testify, the subcommittee will be glad to hear him before Reverend Ridgeway, if he wishes to testify now.

Attorney Walden, I thought maybe you wanted to get back to your law practice. I found out when I was practicing law that about the only vacation a lawyer gets is the time which passes between the time he puts a question to a witness and the witness answers.

Mr. WALDEN. It happens, too, he was one of those on whose testimoney I was going to rely, anyway, so no time will be lost in that respect.

Senator ERVIN. You may proceed. You have a prepared statement?
Mr. RIDGEWAY. Yes, sir.
Senator ERVIN. You are Rev. W. D. Ridgeway, pastor of the Trulight Baptist Church, in Hattiesburg, Miss.?
Mr. RIDGEWAY. I am.
Senator ERVIN. And you have a prepared statement which you would like to read at this time?
Mr. RIDGEWAY. Yes, sir.
Senator ERVIN. You may proceed.

STATEMENT OF REV. W. D. RIDGEWAY, PASTOR OF THE TRULIGHT BAPTIST CHURCH, HATTIESBURG, MISS.

Mr. RIDGEWAY. Mr. Chairman and members of the committee, thank you for giving me an opportunity to appear before your committee. My name is Rev. W. D. Ridgeway. I have been a minister for 31 years, and pastor of the Trulight Baptist Church, in Hattiesburg, Miss., for last 4 years.

I have lived in Forrest County, Miss., for more than 30 years, honoring and obeying the many ordinances and statutes enacted by the State, county, and city governments; paying promptly taxes—State, county, and municipal—to enjoy the privileges of a citizen of a great country and State. I have constantly taught and preached good citizenship for many years. However, even until this day, I have not been permitted to register and vote like other Americans.

When the President of the United States, the Senators, and the Representatives are elected I have no choice in the election, because I am not permitted to cast a ballot for either.

This, gentlemen, is deplorable in a democracy as liberal as America's. It is inexcusable that such a condition shall be permitted to exist in this 20th century in the United States of America.

The glaring disgrace of Forrest County, Miss., is the uncontested fact that of the 12,958 Negroes in the county, less than 25 have been permitted to register and vote. Included in the remaining 12,933 Negroes are doctors, teachers, preachers, and laymen who are disenfranchised simply because they are Negroes.

On October 16, 1956, I was flatly refused the right to register along with 17 other Negroes who were in the office of the registrar at the same time that I was. Again and again, I have gone to qualify myself so that I might be eligible, along with many other Americans, to cast a vote for Federal and State officials only to find myself and other Negroes turned down.

It is always so confusing to me and other Negroes in my county and State to explain to our children when they ask the simple question, "Why is it so easy for foreigners to spend only 5 years in America and Mississippi then enjoy all of the freedoms and privileges that our United States Constitution calls for, but, on the other hand, native born Negro Americans and Mississippians are denied the very basic guaranties that our Constitution provides—the right to vote and petition one's Government without intimidations and economic reprisals?" We cannot answer the above question. You gentleman have the key to the answer.

I know that America does not condone these anti-American acts, but the echoing silence of the legislative branch of our United States Gov-

ernment has been encouraging to those among us who would defy and destroy our Constitution rather than make it applicable to all.

May God give you courage and wisdom to do the right thing for all mankind.

Senator ERVIN. Have you been a minister in Hattiesburg ever since you were ordained?

I presume that is what you do in your church, ordain persons for the ministry?

Mr. RIDGEWAY. That is right.

Senator ERVIN. You have been preaching at the same church?

Mr. RIDGEWAY. No, sir, not in the same church.

Senator ERVIN. But your entire ministry has been in Hattiesburg?

Mr. RIDGEWAY. That has been my residence.

Senator ERVIN. How long have you been a preacher in the present church?

Mr. RIDGEWAY. Four years.

Senator ERVIN. Hattiesburg is in Forrest County?

Mr. RIDGEWAY. Forrest County.

Senator ERVIN. And that is in southern Mississippi?

Mr. RIDGEWAY. Yes, sir.

Senator ERVIN. How far from the gulf?

Mr. RIDGEWAY. Seventeen miles.

Senator ERVIN. That is all.

Mr. SLAYMAN. I have no questions.

Senator ERVIN. Austin T. Walden.

Suppose you just state your name and address there, just for the purpose of the record.

Mr. WALDEN. Austin T. Walden, 200 Walden Building, Atlanta, Ga.

TESTIMONY OF AUSTIN T. WALDEN, ATTORNEY, OF ATLANTA, GA.

Mr. AUSTIN. My name is Austin T. Walden of Atlanta, Ga. I am a native of that State. As a volunteer, I served as captain of Infantry and Assistant Division Judge Advocate in World War I, overseas. I am now and have been for 45 years a practitioner at the Georgia Bar. Politically, I am a Democrat, the organizer and president of the Georgia Association of the Citizens Democratic Clubs. For many years, I have been an active supporter of the Democratic Party in the Nation. Presently, I am an elected member of the Democratic executive committee of the city of Atlanta. This committee has charge of arranging for and holding all municipal primaries in that city. I have been particularly interested in registering and voting, have organized and conducted schools of citizenship for our people, realizing the value of an intelligent and enlightened citizenship.

Ordinarily, the above remarks relative to myself would not have been made. They were made in order to save time entailed in a personal introduction.

My interest in and concern for the total welfare of the 1 million Negroes of my native Georgia, as well as in that of the millions of my people who reside in the South, accounts for my presence here today and makes me grateful to you for having accorded me this esteemed privilege.

As Negroes, we seek nothing selfishly for ourselves alone. Accordingly, therefore, we ask nothing of the Congress which we do not feel in the long run will inure to the benefit and welfare of our country as a whole.

The ultimate object of the proposed civil-rights bills is the implementation of our democratic ideals and making our constitutional concept of equal justice under law a living reality in our Nation's struggle to deserve to win the minds and hearts of men the world over who are striving to gain or retain freedom for themselves and their children.

Our Nation is the most favored Nation of all history. Providence has smiled upon it as the leader of the free world. However, that leadership is not fully accepted among large segments of mankind because of deficiencies in its implementation and practices of its professed and proclaimed democratic ideals, inclusive of all of its citizenry.

Therefore, nothing reasonable should be left undone to give complete and full vitality to the fundamental principles of the Founding Fathers, for success in that respect will, undoubtedly, assure and guarantee the full acceptance of our leadership by the overwhelming majority of mankind, thereby laying the only foundation for permanent peace in our world and freedom for all of God's children.

Hence, the problems with which the proposed legislation deals must be considered and pondered in no narrow, partisan, political sense, because too much is at stake which affects the destiny of our country and the world.

We feel that the enactment of all of the proposed legislation would prove highly helpful and beneficial toward the correction of the deficiencies slightly referred to above. However, because of the transcending importance of the free ballot, we feel that the protection and guaranty of that right is of the utmost importance. The citizen who has the full and free use of the ballot is in position to overcome most of the other disabilities under which he may be laboring.

No claim is here asserted that Negroes are totally free from racial discrimination anywhere in our country. Some of their problems are national, not sectional, though in varying degrees of complexity, acuteness and gravity in different areas of our country. The responsibility for the solution of such problems, however, is the concern and duty of the entire Nation.

The problems of racial descrimination are most acute in those areas where Negroes most numerously reside because, in such areas, attitudes and traditions have been and are dominant which make most difficult for their reconciliation with the ideals of genuine democracy. Elaboration is unnecessary.

In the acquisition and exercise of the ballot, Negroes have had, and in some areas still have, great obstacles to overcome.

With great labor, trial of spirit and expense, grandfather clauses and white primaries were declared illegal and unconstitutional. However, that did not end the Negroes' troubles nor make a free ballot possible.

There are slightly more than a million Negroes in Georgia in a population of more than 3 million.

One hundred and sixty thousand are registered out of a potential of 650,000, remembering that 18-year-olds may vote in Georgia. More than four-fifths of that registration was placed on the books within 2 years following the legal demise of the white primary. It may be

of interest to note that the above increase in registration was directly responsible for the doubling of the white registration during the same period.

Senator ERVIN. If you don't mind, I have to run back over to the Senate for what we call a live quorum call.

I will have to ask you to desist at this point and we will take a temporary recess until I can answer the roll and then come back and resume where we left off.

(Short recess.)

Senator ERVIN. The committee will resume.

You may proceed, Mr. Walden.

Mr. WALDEN. Approximately a million and a quarter of the more than 2 million white population are qualified to vote.

This Negro registration is pretty largely concentrated in the larger cities and other urban areas. Our problem, therefore, arises in the rural areas, to some extent attributable to the county unit system which affords politicians the opportunity, often, to ride to office on the Negro question.

In the immediate past, lives have been lost and property practically confiscated. Negroes have been driven out of the community, their homes fired into at night, because of their efforts to register and vote. Threats, intimidation, economic reprisals, cross-burnings in their neighborhood, on nights before elections have been some of the devices resorted to to deter Negroes from the exercise of their suffrage rights.

In some areas, registration and election officials have been conspirators in various schemes to accomplish the above objectives. Sometimes when Negroes attempt to register, they are told that the books are out; that they are out of blanks; that they will have to come back on a designated day and, on returning, find the office closed; that shortly before a particular election hundreds of Negroes are notified that their registration has been challenged and that they show cause (in Georgia, within 1 to 10 days) why their names should not be stricken from the registration rolls. Hundreds have been challenged or summoned to appear for hearing on the same day when the officials knew that it would be physically impossible to hear and pass upon such numbers on a single day. Many failed to appear on the day cited either because of incorrect addresses or because the notices were received a day or two after the designated day and hour for their appearance. Often a single person will challenge a hundred, 500, or a thousand Negroes, few of whom he knows personally, and nine-tenths of whom he has never seen or heard of, having gone to the registration records and copied their names therefrom.

While it is true that the law permits an appeal when a registrant's name has been stricken from the rolls, but such appeals are nugatory for the reason that the election at which the registrant intended to vote will long since have passed before an appeal could be heard, since such appeals have no priority over pending cases triable at the next term of the court following the removal of the registrant's name from the rolls.

The latter observation makes it highly desirable, if not imperative, as provided in one of the proposed civil-rights bills, that in Federal elections the necessity for exhaustion of appellate review be obviated to the extent that challenges to a registrant's right to remain on the registration rolls should be required to be made in ample time to

permit a final determination of the issue prior to the election in which the registrant intended to participate. Such a provision would nullify and render inoperative one of the most nefarious devices resorted to by those who would deny to their fellow citizens rights guaranteed them by the supreme law of the land.

In my own State over the years, there have been many instances of illegal purges of Negro registrants' names from the rolls. As an attorney, I have appeared as counsel in many such cases. A typical example of wholesale purges was recited by Assistant Attorney General Warren Olney III, in the Pierce County, Ga., cases when he appeared before the Gore subcommittee on October 10, 1956.

In Randolph County, Ga., Negroes sued the county registration officials in the United States district court because of a wholesale, illegal striking of their names from the rolls. By a verdict of the jury and a United States district court judge their names were restored and damages awarded the plaintiffs.

The verdict of the jury, the findings of fact, and conclusions of law by the court in that case are so illustrative of the practices herein above recited that the speaker begs leave later to file with this committee the above record in said case for its information in its consideration of the relevant legislation apropos the question of suffrage rights.

In making these allegations of discrimination perpetrated against my race, candor and fairness demand that it be stated that the evils complained of are really not sanctioned by the great majority of the people of our State. It is the political demagogs who cause the trouble—those to whom in the past it has been politically profitable to exploit the prejudices of the uninformed of their constituency at the expense of a racial minority.

Georgians, are fairminded but, in many instances, are afraid to be vocal, for obvious reasons, even though before their very eyes the fountain principles of our Christian democracy are at stake.

Now it would be inaccurate and unfair to say that the picture is totally dark. Over the years in my State, for instance, there have been quite a few occasions when prominent white citizens have boldly and forthrightly protested against arbitrary and illegal purges of Negro registrants. Some instances:

(*a*) In Baxley, the county seat of Appling County, the mayor of the city and 11 other prominent citizens requested the Department of Justice to probe the conspiracy against Negro voters, stating that one registration board member had copied names of Negroes at night.

(*b*) In Waycross, Ware County, two registrars quit—they happened to be ladies too—because they did not want to be parties to the illegal purging of Negroes' names from the books.

Partly as a result of such action the challenges to 700 Negroes were withdrawn.

(*c*) In Lamar County, Raymond B. Davis, chairman of county board of registrars, announced that in those cases where Negroes failed to appear, their names would remain on the rolls unless competent evidence was produced showing their disqualification. In this connection I might interpolate by saying in all instances where a party fails to appear, they are automatically, their name is stricken from the books.

(*d*) In Polk County it was ruled that the challenge of 499 Negroes by a single person was illegal, under the ruling of Chairman Lon Duckworth of the Democratic State executive committee.

(*e*) In Twiggs County, Ga., the county registrar would not turn over the list of Negro registrants because of his belief that it was a plan to improperly challenge them.

Your speaker loves his native State; has faith in the basic sense of justice of his fellow Georgians. Had that not been true, he would not have spent all of more than 70 years in that State, being away from it only when he volunteered to fight for his country or when he was compelled to go to a Midwest State for education in the law because his native State then (49 years ago) denied as well as now his race the right to receive such training in its university while gladly opening its doors to foreigners coming from all parts of the world.

Your speaker is fully aware of the fact that the observations in the foregoing paragraph have little, if any, direct bearing upon the matters before you. We feel, however, that they are justified because of statements and assertions already made before a committee of the House of Congress by high officials of the State of Georgia.

The Honorable Eugene Cook, Attorney General of Georgia, against whose clients the speaker has appeared during the last several years as moving counsel in civil rights cases in the United States district court, stated that "Negroes do not desire integration." I think I am a little better spokesman for Negroes than is our attorney general. We are doing what we can under the law and not otherwise to secure our constitutional rights. We do not resort to subterfuges, legally colorable or otherwise.

Our attorney general says he loves Negroes in their places; that he has eaten with them in the same room.

Our complaint is that most of those who profess to love us while denying to us our constitutional rights, reserve unto themselves the exclusive prerogative of pointing out, designating, and circumscribing what "their (our) places" are.

The speaker is certain that this honorable committee shall not permit itself to be diverted from the main issues and questions before it by irrelevant and immaterial matters to which the speaker deemed it necessary to reply under the circumstances.

In conclusion the speaker would like to state that many of the matters herein above referred to are within his own personal knowledge.

In addition there are present in this chamber today representatives from the States of Alabama, Mississippi, and North Carolina—I understand that the gentleman from North Carolina testified yesterday and you already heard from Mississippi—who are prepared to give personal testimony relative to many of the matters referred to in this presentation and would like to be heard on the same. I should have added the State of Georgia too, aside from myself.

Many thanks for your patient consideration.

Senator ERVIN. I notice on page 3 you have a statement about homes being fired into.

Where have homes been fired into, in what counties?

Mr. WALDEN. Oh, that was down in Montgomery County, and several other counties for that matter.

Senator ERVIN. How many instances in Montgomery County?

Mr. WALDEN. I don't recall but one instance in Montgomery County.

Senator ERVIN. What other instances?

Mr. WALDEN. I don't recall. You see at the time there was back 7 or 8 years ago. There was a rash of such incidents in many parts of the State where Negroes were attempting to vote. I did not at the time make a record of them but I did have personal knowledge of their happening because it was widely reported in the newspapers.

Senator ERVIN. That was 7 or 8 years ago?

Mr. WALDEN. Yes.

Senator ERVIN. Do you know of any instances of shooting within the last couple of years?

Mr. WALDEN. I don't recall of any in the last 4 or 5 years.

Senator ERVIN. Conditions have vastly improved in Georgia, have they not?

Mr. WALDEN. There has been considerable improvement.

Senator ERVIN. You live in Atlanta?

And in Atlanta there is virtually no discrimination, is there, between the races?

Mr. WALDEN. None whatever now, although there was years ago, I mean 8 or 9 years ago when they challenged 3,000 at one time, and I defended 105 cases over a period of 2 weeks, and then they stopped the purge and that stopped that.

Senator ERVIN. You have no complaint as to Atlanta at the present time?

Mr. WALDEN. We have no complaint as to Atlanta; that is right.

Senator ERVIN. And the same is more or less true of most of your urban centers, isn't it?

Mr. WALDEN. That is true.

Senator ERVIN. You refer to the county unit system in Georgia?

I believe there was a case before the Supreme Court of the United States a few years ago challenging the validity of the county unit system, and the Supreme Court refused to make any decision on the ground it was a political case.

Mr. WALDEN. That is right.

Senator ERVIN. Rather than a judicial question.

Mr. WALDEN. That is right.

Senator ERVIN. You have practiced law in Atlanta for approximately 50 years, or is that too long?

Mr. WALDEN. No, I have practiced in the State 45 years. This is my 46th year.

Senator ERVIN. And this is your 46th year?

Mr. WALDEN. Yes.

Senator ERVIN. I know something about your record and according to all of the information I have, you have had a very successful practice.

Mr. WALDEN. Well, I think I have succeeded fairly well.

Senator ERVIN. And you have accumulated a good deal of property, have you not?

I am not going to ask you the extent of it.

Mr. WALDEN. At least I have got enough to be concerned about a living, I can say that.

Senator ERVIN. I notice that in your statement you referred to the Walden Building. That is an office building in Atlanta which you own, is it not?

Mr. WALDEN. Well, at least it bears my name.

Senator ERVIN. Isn't it your property?

Mr. WALDEN. No, it is not my property wholly. Others are interested in it.

Senator ERVIN. Is it owned by a corporation?

Mr. WALDEN. No, owned by individuals.

Senator ERVIN. You certainly have no just complaint as to how you yourself as an individual attorney have fared, do you?

Mr. WALDEN. No, I have no personal complaint, although I could relate some harrowing stories that I had in trying to arrive where I am, but I am not complaining about myself.

I am concerned about the lot of my people in those areas where they can't help themselves.

Senator ERVIN. In any of these cases do you appear as counsel for the NAACP or do you hold an official position?

Mr. WALDEN. I have no official position in the NAACP except that I am a member of the national legal committee.

That is an honorary committee.

Senator ERVIN. Then you have been called into these cases that you have mentioned as a private practitioner?

Mr. WALDEN. That is right, and in which I have represented some NAACP cases. I have some now for that matter.

Senator ERVIN. I want to commend you for the fact that you have called attention in your statement to conditions which you consider bright spots as well as to conditions which you do not place in that category.

Mr. WALDEN. I think it would only be fair to do that.

Senator ERVIN. Were you reared in Atlanta or were you reared somewhere else in Georgia?

Mr. WALDEN. Fort Valley, in the central part of the State.

Senator ERVIN. Of course you point out here the fact, you say that approximately 160,000 colored people are registered in Georgia?

Mr. WALDEN. That is right.

Senator ERVIN. What do you base those figures on?

Mr. WALDEN. I base it on the records of the secretary of state, a copy of which I have here.

Senator ERVIN. Do the registration books in Georgia disclose the race of registrants?

Mr. WALDEN. They do. They have separate books, separate registration. The law requires it.

Senator IRVIN. They don't do that in my State. I just did not know how it was. That is the reason I asked that.

Now the truth of it is in Georgia you are like we are in North Carolina. You have a one-party State, don't you? That is, what it is designated as.

Mr. WALDEN. Pretty largely so. Of course Mr. Eisenhower has made some inroads in it and we hope he will make some more.

Senator ERVIN. He still has not quite got it all converted from democracy as I noted in the last election.

Mr. WALDEN. Oh, no. They have still got a long way to go.

Senator ERVIN. I believe Georgia and my State were among the few remaining faithful to the Democratic Party in the last election.

Mr. WALDEN. I helped them remain faithful, too.

Senator ERVIN. So did I. With reference to registrations I am familiar with the situation in this respect in my own state. There

are an awful lot of folks white as well as colored that do not care to vote, isn't that true?

Mr. WALDEN. That is true.

Senator ERVIN. I know in my own State of North Carolina we have approximately 1,750,000 white people who are qualified by age at least to register, and vote, and approximately 30 percent of them vote in an off year and approximately 50 percent or just a little less than 50 percent in a presidential year, and that is a condition I find in my State both among white people and colored people.

There are a lot of people who are very indifferent to the right of franchise.

Mr. WALDEN. That is true.

Senator ERVIN. I presume that is true in Georgia as it is in North Carolina?

Mr. WALDEN. That is right.

Senator ERVIN. I don't have any further questions.

Mr. MITCHELL. Mr. Chairman, the testimony refers to 2 witnesses, 1 from Alabama and another from—well in any event we have an affidavit here from a witness from Alabama, Mr. Boynton. Would you stand, Mr. Boynton?

This affidavit shows that a number of persons went to a place of registration and were not permitted to register.

He accompanied three of them and can testify of his own knowledge that they were not registered, and I just wanted you to know he is here if you care to ask him any questions about that specific thing.

Mr. WALDEN. I wanted to make this affidavit a part of the record and then if the committee sees fit to hear him orally, he is available.

Senator ERVIN. You might let me see the affidavit.

Let it be included in the record.

(The document is as follows:)

STATE OF ALABAMA,
County of Dallas:

Before me, a notary public for said State and county, appeared the undersigned who are citizens of Dallas County and the State of Alabama, say they have appeared before the Dallas County Registration Board located in the court house of Selma, Ala., Dallas County, in 1955 and 1956, many having filled out more than one application, the same being turned over to the proper authority, and have not received their registration certificate entitling them to first class citizenship.

(Signed) Cleophus F. Merritt, 1625 Voeglin Avenue; Henry W. Shorman, 1519 Church Street, Selma, Ala.; Lucile R. Terry, 1229 Voeglin Avenue; James R. Green, Rt. 1, Box 188, Sardis, Ala.; Cleo Carstarplier, 1611 Lawrence; R. K. Lindsey, 819 Minter Ave.; E. C. Page, 1603 Union; Minnie L. Flood, 1401 Tremont Street; Rev. P. L. Anderson, 1607 Union Street; George Smith, 508 First Avenue; Jennie V. Andersan, 1608 Sylvan Street, Selma, Ala.; Rebecca Anderson, Route 1, Box 21, Browns, Ala.; Willie Hunter, Browns, Ala.; Lilliantean Kimbrough, Route 1, Box 21, Browns, Ala.; Fred Smith, Orrville, Ala.; A. T. Carson, Dallas County, Ala.; Ethel Washington, R. F. D. 1, Box 7, Browns, Ala.; Clara B. Smith, R. F. D. 1, Box 140, Orrville, Ala.; Arthur Gardner, Route 1, Box 24 A, Browns, Ala.; C. A. Maddox, M. D., 1511 Mabry Street, Selma, Ala.; G. D. Maddox, 1511 Mabry Street, Selma, Ala.

Sworn to and subscribed before me this 16th day of February 1956.

[SEAL] AMELIA P. BOYNTON,
Notary Public.

My commission expires September 30, 1959.

Senator ERVIN. I don't care for you to testify. I will let that affidavit go in the record, unless you want to add something to the affidavit.

Mr. S. W. BOYNTON. I have nothing to add.

Senator ERVIN. I would not require you to testify to the same things you state in the affidavit.

Mr. WALDEN. Mr. Chairman, as I stated there is another witness from Georgia who would corroborate very largely some of the things I have stated. It was Ben Shorter, of Cuthbert, Ga., who was the moving spirit in the suit against the registrars down there, and I would like for at least to let him give a little firsthand testimony.

Senator ERVIN. I expect we had better recess until later.

I am trying to lose a little weight so it does not make much difference to me whether I get any calories, but some of the folks here may not be in that same fix.

It is 1:25 now. We will take a recess until 2:45.

(Whereupon, at 1:25 p. m., the committee was recessed, to reconvene at 2:45 p. m. of the same day.)

AFTERNOON SESSION

Present: Senator Ervin (presiding).

Also present: Mr. Slayman and Mr. Young of the committee staff.

Senator ERVIN. I find that it is probably going to be necessary later for me to recall Reverend Courts, so I request he remain.

STATEMENT OF CLARENCE MITCHELL—Resumed

Mr. MITCHELL. I would like in that connection, if I may, to call attention for the record to the statement of the Governor of Mississippi on the matter of the Negro voting. If you have no disagreement, Mr. Chairman, I would like to do it now.

Senator ERVIN. That will be all right.

Mr. MITCHELL. The Governor appeared before the House Judiciary Subcomittee and these are the quotes from his testimony:

With reference to the population 22,000 of them, colored were registered to vote in 1954. That must have been based on an investigation I made myself as Attorney General which I did in 1954 to determine that fact.

That is from page 314 of House Hearing Record of February 6, 1957.

In 1954 we did have 22,000 of them who are registered, but of that 22,000 who are registered only 8,000 of them had paid this poll tax, so that cut it down to 8,000, of course.

That is page 315.

In the 1955 primary for governor it was said that approximately 7,000 of them voted.

That is on page 315.

The whole point of this, Mr. Chairman, is that apparently there is in Mississippi a discernible way of telling who is a colored voter and who is not.

Senator ERVIN. Had you finished your testimony?

STATEMENT OF AUSTIN T. WALDEN—Resumed

Mr. WALDEN. I finished my individual testimony but I would like to call a gentleman from Cuthbert, Ga.

Senator ERVIN. I think I ought to go with you a little further in that thing. You are one of the wealthy men of Atlanta; aren't you?

Mr. WALDEN. No, sir; I just heard that today.

Senator ERVIN. You own a good deal of rental property there?

Mr. WALDEN. Yes; I own some.

Senator ERVIN. What kind—store buildings or dwellings?

Mr. WALDEN. Both.

Senator ERVIN. Do you know what its tax value is, what your property and land, its value is for tax purposes?

Mr. WALDEN. My evaluation or the tax?

Senator ERVIN. I am not trying to pry into your business, but I am just trying to show that it is possible by hard work and diligence for a man of your race to prosper in the South.

Mr. WALDEN. Well, I didn't——

Senator ERVIN. I don't want to embarrass you.

Mr. WALDEN. I didn't think we were investigating that.

Senator ERVIN. No; but a great many things have been said on that subject pro and con since this investigation started. I don't want to have you make a disclosure.

Mr. WALDEN. My property is assessed at $125,000.

Senator ERVIN. I don't ask it to embarrass you. I ask it for the purpose stated. While I never had the privilege of meeting you before these hearings, I know that you have a reputation of being a very able member of the Georgia bar.

Mr. WALDEN. Thank you.

Senator ERVIN. Excuse me, I interrupted you. You were talking about another witness.

Mr. WALDEN. You may recall in my statement I made reference to the Randolph County situation. We have a leader of that group and while he does not intend to cover the territory that I have covered, there are a few specific matters that I would like to have him testify.

Senator ERVIN. We will be glad to hear from him.

Mr. WALDEN. This is Mr. Ben T. Shorter, of Cuthbert, Ga.

He will tell in his own way the points that he wanted to bring out.

Senator ERVIN. Suppose you tell me first where Cuthbert is. I am familiar with parts of Georgia, but I don't know what area of Georgia, Cuthbert is in.

STATEMENT OF BEN T. SHORTER, CUTHBERT, GA.

Mr. SHORTER. Cuthbert is on the southwest side of Georgia. It is 26 miles from the Alabama line. 78 miles north of the Florida line. It is between Columbus and Bainbridge. Halfway between Columbus and Bainbridge.

Senator ERVIN. Thank you. Proceed.

Mr. SHORTER. I am Ben T. Shorter, the chairman of the Randolph County Voters League of Cuthbert, Ga. We have had a number of voters for a period of years. I have been chairman of that league since 1946. In 1954 we had the usual purging which cut our list from approximately 800 to less than 100. We were not satisfied to lose that

many voters in one stroke. So we went seeking for some relief? We attempted to get a local attorney to represent us but that was impossible.

The local attorneys said it would simply ruin their reputation to be involved in a case where we had lost our voting rights and they would be representing us, it would cost too much of their usual business. We did succeed in getting an attorney and the price of that ran to $2,000 to employ the attorney.

We were able to raise this money by soliciting from our friends in various areas and we promised them that whatever relief we would get we would certainly be glad to pass it around if there were other cases that there could be some relief received from such cases, we would be glad to present it.

Therefore my business here is to ask this committee in the interests of the common layman who has been deprived of his rights or might be deprived, since the expense is so high, the cost to us $2,000 in attorney's fee and more than $1,800 in being transported, the number of people that we had to transport from court to court, which made our total cost of approximately $4,000 of costs. We were happy to receive our justice as we felt in this case. The names were put back on the list.

We are happy down there and we are getting along together. But it is costing so much for any individual who has been so wronged under the present laws to get his statement into a Federal court that this law needs to be passed that there will be a cheaper way for the ordinary citizen to get relief.

Senator ERVIN. I presume that the attorney brought a case in the Federal court?

Mr. SHORTER. Yes, sir.

Senator ERVIN. Where was that case heard?

Mr. SHORTER. It was first heard in Macon, Ga., which is 126 miles from Cuthbert. We had to take a hundred more people to that particular court.

Senator ERVIN. Was all of the hearing in Macon?

Mr. SHORTER. No, sir.

Senator ERVIN. Where was the other hearing?

Mr. SHORTER. Columbus, Ga.

Senator ERVIN. How far are you from Columbus?

Mr. SHORTER. We are 65 miles from Columbus, approximately 65 miles.

Senator ERVIN. And 110. Do you remember the name of the Federal judge who tried the case? Was it tried or adjusted?

Mr. SHORTER. It was tried by a jury.

Senator ERVIN. What judge presided?

Mr. SHORTER. Judge W. A. Bootle.

Senator ERVIN. What year was it?

Mr. SHORTER. It started in July 1954 and ended in 1955 in September.

Senator ERVIN. What is the population of Cuthbert?

Mr. SHORTER. Approximately 4,000 people.

Senator ERVIN. And you were restored, the ones that had been stricken from the registration books were restored?

Mr. SHORTER. Yes, sir.

Senator ERVIN. And permitted to vote in the last election?

Mr. SHORTER. They were in time for the very last election.
Senator ERVIN. Do you have a poll tax in Georgia?
Mr. SHORTER. No, sir.
Senator ERVIN. They used to have a poll tax in Georgia. When was that abolished?
Mr. SHORTER. I don't know the year.
Mr. WALDEN. About 1945.
Senator ERVIN. That's all.
Mr. SLAYMAN. Did you have any other people with you?
Mr. WALDEN. That's all.
Senator ERVIN. Mrs. Beatrice Young is listed as the next witness. Do you have a prepared statement?

STATEMENT OF MRS. BEATRICE YOUNG, JACKSON, MISS.

Mrs. YOUNG. That's right.
Senator ERVIN. Your address is 525 Campbell Street, Jackson, Miss.
Mrs. YOUNG. Yes.
Senator ERVIN. You still live there?
Mrs. YOUNG. That's right.
Senator ERVIN. Do you wish to present your prepared statement at this time?
Mrs. YOUNG. Yes, sir.
Senator ERVIN. You may proceed.
Mrs. YOUNG. Mr. Chairman and members of the committee, my name is Mrs. Beatrice Young. I live at 525 Campbell Street, Jackson, Miss.

On the 25th of November 1956, my sister whipped her little girl and the following day, which was November 26th, Deputy Sheriff Andy Hopkins called my house about 5:30 in the afternoon and asked me if Mildred McGee (my sister's child) was at my home.

I said, "No," and he said, "If you have her it is going to cause you a lot of trouble."

I said, "No, not any at all because she is not here." He then said to me that he was going to come over and search the house. I told him to come ahead and bring a search warrant. He told me he did not need a search warrant to search my house and called me a smart black so-and-so. I told him I knew the law and that if he came he had better bring a search warrant, and that I didn't like the idea of his cursing and was not going to have it. I hung up in his face.

About an hour and a half later, Deputy Hopkins knocked on the door and I opened it but did not unlock the screen door. He said, "Do you want me to kick this door down, or do you want to open it?"

I said, "I will open it if you have brought a search warrant like I told you to do."

He said, "You better open the door." I asked him again, "Do you have a search warrant?" He said, "Yes, open the door and I will give it to you."

I opened the door and he hit me in the head with his blackjack and came in. I asked him why he hit me but he didn't answer. I asked him again and he hit me in the mouth and told me to hush and that I was under arrest. I told him I had not done anything and if I was under arrest to take me to jail and stop cursing me.

On my way to jail, Deputy Hopkins asked me if I was working and for whom I worked. I told him no one. He asked me where my husband worked and I said, "For the Government."

He then said he always found that Negroes working for the Government were always smart and that this time it was his damn wife. He asked me if I had a lawyer, and I told him "No." He cursed me and took me to jail. There was a man with him but he told the man not to come inside with him because he wanted to take me in all by himself and that he had some work for me to do.

When we got inside, I asked Deputy Hopkins if I could use the phone to get someone to stay with my children. I called Mrs. Era Pitman who lives on Whitfield Mills Road. We then went upstairs and there Deputy Hopkins asked me my name and age. He said, "When I called you and came out you asked me for a search warrant didn't you?" I said, "Yes." He said, "I can give you 30 search warrants," and he started hitting and cursing me. I told him I had not done anything and for him to stop hitting me. He did so for a few moments. I began to talk to him and told him that I had had an operation on my head. The jailer sitting at the desk had not opened his mouth until then. He (Mr. Boteler) said, "Girl, let me see where had your operation." I went to show him and he hit me on the head. I told him that I was 2 months' pregnant. Mr. Boteler felt my waist and asked me what I had on. I said "a girdle." Deputy Hopkins said, "I thought you had a little boy at home." I told him I did. He asked me how old he was, I said, "15 months." He said, "And you're pregnant again?" I said, "Yes." He said, "I understand you stay that way, you black so-and-so. He began pacing back and forth and said, breathlessly, "I ought to kill you for all the trouble you have caused me."

He started beating me again, all over the head, shoulders and body. A few minutes later, he turned me over to Mr. Boteler and told him to lock me up in a room on the fourth floor. When we got to the door of the cell, Mr. Boteler said, "Wait a minute," and kicked me in the cell.

The following morning about 5:30, Mr. Boteler came to my cell and told me to come to the door. I told him I was unable to do so because I was sitting in the corner. He asked me if my so-and-so was sore. I said, "Yes." He said, "in a minute my buddy (Deputy Hopkins) will return and we are going to take you out and beat you again." About 9:00, Deputy Hopkins came and said, "I started to kill you last night. If you live to get out of here and give me any more trouble I am going to kill you."

He asked me for my telephone number. I gave it to him. He called my husband and told him I was in jail, and that I needed to be home with my children and asked him if he was going to come and get me.

He reported later that my husband was not coming after me and from the way he talked he was also smart and he wished he would come so that he could give him the same treatment.

About 11:30, Lawyer Stockdale called and told them to release me. So I was released and went home.

On November 26 I went to Dr. Long (a white doctor) who treated me for bruises and soreness. He gave me some pills and told me to stay in bed for a week. On December 1, I went to Dr. Miller for further treatment and on December 3, I lost my child, as stated in Dr. Miller's medical report. I have a copy of it here.

(The report referred to is as follows:)

DR. W. E. MILLER,
1040 Dalton Street,
Jackson 3, Miss., December 10, 1956.

MEDICAL SUMMARY OF THE CASE OF BEATRICE YOUNG

To Whom It Concerns:

The following is a brief summary of the case of Beatrice Young:

Name and address: Beatrice Young, 525 Campbell Street, Jackson, Miss.

History: On December 1, 1956 the above patient came to the office complaining of pains and soreness in the head, back, stomach, hips, left shoulder, arms, and legs. She stated that she was beaten by a deputy sheriff or an officer of the law on November 26, 1956 and had been treated by another physician prior to this visit. On November 23 the patient was examined by me and a diagnosis of pregnancy in 2d month was made.

Examination: Physical examination revealed a colored female about 30 years old apparently in severe pain and discomfort. Temperature 98.6; pulse 86; respiration 22; blood pressure 130/82; height 65''; weight 155 pounds. Multiple contusions and bruises are present on the left side of the scalp, left shoulder and arm, right arm, left and right hips, left and right thighs anteriorly and posteriorly. The abdomen and pelvic region are tender. Sedatives and progesterone were administered. Bed rest and inactivity were advised.

Course: The patient returned on December 3 complaining of intense recurring pelvic pains and the passing of blood from the vagina. Examination revealed that the cervix was patent and that the uterus was contracting at intervals of 20 minutes to 30 minutes. Appropriate treatment was given and the patient was referred to the hospital if the pains continued. The patient continued to have pains and passed a foetus with placenta that night. She was hospitalized December 4 and 5, 1956 at the Jackson State College Health Center, and returned home to remain in bed and inactive for the next week.

Prognosis: At present time no complications have occurred. The patient is under professional care and treatment.

(Signed) W. E. MILLER, M. D.

Mrs. YOUNG. There is a report being circulated whose source is the Hinds County Courthouse relative to a monstrous allegation that I had a criminal abortion. Such a statement is a calculated falsehood emanating from the minds of prejudiced, sinful men whose only desire is to try to be relieved of the accusation of having been responsible for my losing my child.

I want it known here, now and always that the reason I lost my child is because of the sick minds of the men mentioned above.

God forbid such injustices.

Gentlemen, I beg of you to do something to stop these un-Godly acts.

Thank you.

Senator ERVIN. You testified before the House committee about this matter?

Mrs. YOUNG. No.

Mr. MITCHELL. No, we submitted a statement.

Senator ERVIN. You submitted a statement?

Mr. MITCHELL. Yes.

Senator ERVIN. And do you know James Etta Jackson?

Mrs. YOUNG. Yes.

Senator ERVIN. Do you know Mildred McGee?

Mrs. YOUNG. Yes.

Senator ERVIN. Mildred McGee is the daughter of James Etta Jackson?

Mrs. YOUNG. That's right.

Senator ERVIN. The origin of this trouble was that you were alleged by James Etta Jackson to be keeping her daughter Mildred McGee in your house against the will of her mother James Etta Jackson?

Mrs. YOUNG. That's right. But she wasn't there.

Senator ERVIN. That was the occasion for these officers coming there, wasn't it?

Mrs. YOUNG. That's right.

Senator ERVIN. Do you want to ask any questions?

Mr. SLAYMAN. No questions.

Senator ERVIN. I present for the record a copy of an affidavit which I am advised by Senator Eastland's office has been filed with the House Committee. It reads as follows:

STATE OF MISSISSIPPI,
County of Hinds:

Personally came and appeared before me the undersigned authority in and for the jurisdiction aforesaid, A. L. Hopkins, who having been first duly sworn by me on his oath says:

On the 26th day of November 1956 James Etta Jackson, a colored female of 5544 Gault Street, Jackson, Miss., came to the Chief Deputy Sheriff's Office located in the Hinds County Courthouse, Jackson, Miss., and asked for assistance in locating and returning her 16-year-old daughter, Mildred Magee, to her home.

James Etta Jackson stated that on the night of November 25, 1956, she found her daughter, Mildred Magee, in a beer tavern, demanded that she leave and accompany her home which Mildred Magee refused to do and it became necessary for James Etta Jackson to "frail" the said Mildred Magee. James Etta Jackson then reported that her daughter then accompanied her to her home but later that evening ran away and returned early the morning of November 26, 1956, while James Etta Jackson was absent from home and took most of her wearing apparel.

James Etta Jackson stated that she attempted to locate her daughter and ascertained that she was at the home of her aunt, Beatrice Young, 525 Campbell Street, Jackson, Miss.

James Etta Jackson further stated that she had contacted her sister, Beatrice Young, in an attempt to ascertain if Mildred Magee was hiding in her home. According to James Etta Jackson, Beatrice Young denied that Mildred Magee was or had been at this residence but further stated that "if she were there that she would not reveal this information to James Etta Jackson because she felt that Mildred Magee was being mistreated at home."

After ascertaining from James Etta Jackson that she had sufficient information that her daughter had taken refuge in the home of Beatrice Young and that Beatrice Young was planning to send this juvenile girl to St. Louis, Mo., against the will and wishes of her mother, I then called Beatrice Young by telephone (5-5584), identified myself and explained to her that her sister, James Etta Jackson, was in my office requesting assistance in locating her daughter, Mildred Magee.

I was informed by Beatrice Young that Mildred Magee was not at her residence and had not been there that day. She further informed me that she would not reveal the whereabouts of Mildred Magee if she knew where she was. She then informed me that I was welcome to come to her house and satisfy myself that Mildred Magee was not there. She further informed me that she was employed by an attorney—that she "knew the law and you god damn sure better not come out here without a search warrant."

She then terminated the conversation by hanging up the receiver.

I then explained to James Etta Jackson that I had no jurisdiction to go into the home of Beatrice Young without a warrant for her arrest or without a search warrant for her home. She then asked where she could go to sign the necessary papers and was told that it would be necessary for her to sign them before a justice of the peace.

Judge James Barlow was contacted by public service and requested to wait in his office until James Etta Jackson arrived to sign an affidavit against her sister Beatrice Young.

Sheriff Albert Jones and I, accompanied by James Etta Jackson, proceeded to Judge James L. Barlow's office, 400 West Capitol St., Jackson, Miss., where

James Etta Jackson signed an affidavit against Beatrice Young for contributing to the delinquency of a minor. Judge Barlow then issued the warrant and Sheriff Jones and I proceeded to the home of Beatrice Young at 525 Campbell St., Jackson, Miss.

Constable Allen Ray Moore of the first district of Hinds County led us to this address as we were unfamiliar with this section of the city. Upon arriving at the home of Beatrice Young, I knocked on the door and a colored woman came to the door and without unlocking the door said "Who is it?". I advised her that it was the sheriff and a deputy. She then unlocked and opened the door and said "Have you got a search warrant?" to which I replied, "I do not have a search warrant but I do have a warrant for your arrest" (the sheriff, Constable Moore, and I had already stepped inside the living room at this time).

She said, "Well go ahead and arrest you god damn white son-of-a-bitch" and then struck at me with her fist. At this time Beatrice Young was restrained by me. She was not struck or beaten. She was then accompanied to the sheriff's automobile by Sheriff Jones and me and brought to the Hinds County jail.

The allegation that the door to this residence was broken down, that Beatrice Young was beaten or mistreated in any way is not based on the facts. She was restrained after being placed under arrest, brought to the Hinds County jail, booked in the proper manner and incarcerated.

Upon arriving at the Hinds County Courthouse, Sheriff Jones accompanied Beatrice Young and me to the fifth floor of the courthouse which houses the jail. He then returned to his office and Beatrice Young was booked on the jail docket at 6 p. m. and placed in a cell on the fourth floor of the jail where she remained until the following day when her husband made arrangements for her release.

Beatrice Young entered pleas of guilty on November 27, 1956, to contributing to the delinquency of a minor and to resisting arrest. After entering these pleas, she paid a fine in Judge Barlow's Court and was released.

At no time did Beatrice Young state to me or to anyone else in my presence that she was pregnant nor did she appear to be pregnant. Neither did she state that there was previous injury to her head or to any other part of her body."

This the 19th day of February 1957.

[s] A. L. HOPKINS, *C. C. D. S.*

Mr. MITCHELL. Mr. Chairman, I think Mrs. Young is prepared to say that she has not paid any kind of a fine. You did not appear before any judge?

Mrs. YOUNG. I really haven't. I just know Judge Barlow.

Senator ERVIN. Do you know whether your husband went before Judge Barlow and paid a fine for you?

Mrs. YOUNG. No, he didn't go before Judge Barlow because he doesn't know him.

Mr. MITCHELL. This matter is before the Department of Justice and I am very happy that we have here this kind of a statement and I think in the long run it will be shown who was right and wrong in this situation. The tragedy of this is that here apparently was a family quarrel which in any reasonable community would have been probably settled by a couple of telephone calls. Instead here is the elaborate machinery of the law invoked with a couple of deputy sheriffs to go after one woman and bring her down to the jail. Then, there ensued these events which led to a condition which resulted in the loss of her child. It is impossible for me to understand how the people of Mississippi aren't more concerned about the injustice and inhumanity of that situation than they are about trying to file this sort of statement which tends to discount the whole thing.

Senator ERVIN. I had no knowledge about the matter myself. I apparently heard some part of both sides of the thing, and having no knowledge of it, of course, on the other hand if the statement is correct that her sister applied for a warrant against her and the officers hadn't

gone and attempted to serve the warrant, I expect they would have been charged with discrimination in another way.

I hope whatever the final truth is it will be established but I don't know, but I just offer this so as to let both sides be present.

Mr. SLAYMAN. Mr. Chairman, may I ask a couple of technical questions here? Mrs. Young, you have heard this statement read and we have heard you read your statement. May I ask you this question: Were you ever shown any kind of a warrant?

Mrs. YOUNG. No kind of a warrant at all. No warrant at all.

Mr. SLAYMAN. May I ask you another question? Have you had any kind of criminal trial at all growing out of this situation?

Mrs. YOUNG. I haven't been to any trial at all.

Mr. SLAYMAN. None whatsoever?

Mrs. YOUNG. No trial at all.

Mr. SLAYMAN. Then to the best of your own knowledge, and belief, you have not been found guilty of any criminal violation growing out of this situation?

Mrs. YOUNG. No violations at all. The only thing on there that he said that I really did was when I hung up in his face and I went to the door and I constantly asked him for the search warrant for the simple reason—that I talked with the lawyer about a trial over a girl getting beat up. He asked this girl, "when people come to your house, why do you let them in without a warrant?" She couldn't even identify the people who beat her. They knocked her down and beat her up and broke her arm. He said the safest thing to do when they have a warrant and knock on the door, is to let them in. I was just asking him for this warrant. If he presented this warrant I was going to let him in.

Mr. SLAYMAN. But you say that he presented no kind of warrant, a body warrant or search warrant?

Mrs. YOUNG. No kind of warrant. No warrant for arrest nor any warrant at all.

Senator ERVIN. Do you know Sheriff Jones of Hinds County?

Mrs. YOUNG. Yes.

Senator ERVIN. Was he along with Deputy Hopkins?

Mrs. YOUNG. Yes.

Senator ERVIN. Do you know Constable Moore?

Mrs. YOUNG. Yes.

Senator ERVIN. Was he along with him?

Mrs. YOUNG. When we got to the jail Jones went off duty. The other fellow went as far as the jail and Mr. Hopkins wouldn't let him go up with us. He took me up by himself.

Senator ERVIN. What became of your niece Mildred Magee?

Mrs. YOUNG. She was hiding about 2 miles away from where I live, with a girl friend. She was going to school every day, and she was with the girl's aunt.

Senator ERVIN. Did your sister ask you where her daughter was?

Mrs. YOUNG. She called me early in the morning.

Senator ERVIN. Did you tell her where her daughter was?

Mrs. YOUNG. I told her I didn't know. I told her if I knew I wouldn't tell her. I told her, "I don't have time to hear your troubles," and I went on back to my washing.

Senator ERVIN. When did you find out that the daughter was 2 miles away?

Mrs. YOUNG. When she came home they found out where she had been stopping at.

Senator ERVIN. Senator Sparkman, you have asked the privilege to make a statement before the committee. Would you like to make a statement at this time?

Senator SPARKMAN. I don't want to break in. I asked for the opportunity some time ago.

Senator ERVIN. I believe that she is the last scheduled witness. The only other thing that I know I want to call Reverend Courts but it may be necessary for me to let it go until the morning until I get further information.

Senator SPARKMAN. My statement is rather brief. If you care to I would be glad to give it at this time.

Senator ERVIN. We will be glad to hear it at this time.

STATEMENT OF HON. JOHN SPARKMAN, UNITED STATES SENATOR FROM THE STATE OF ALABAMA

Senator SPARKMAN. Mr. Chairman, I confess that I have not agreed with Attorney General Brownell and other proponents of the so-called civil rights legislation now before your committee. There is one statement, however, that the Attorney General made in his testimony with which I am in hearty accord. It is that there's needed and I quote his words "A greater knowledge of the problem."

In this regard, Mr. Brownell is entirely correct. For some years, I have advocated a better understanding of the facts. That would show, in my opinion, that the kind of legislation now before this committee would not accomplish what its sponsors may think.

You just cannot legislate the mores or traditions or habits of a people. The Prohibition amendment proves this, and the lawbooks are replete with similar illustrations. Moreover, events happening every day in all parts of this Nation show that in actual practice there is just as much discrimination elsewhere as in the South. Maybe the laws are not the same but, by and large, the customs and practices are.

Such a study of the facts would also show that improvement in economic conditions inevitably makes for improvement in racial relations.

By the way, Mr. Chairman, if I may digress from my prepared statement, I was reading the Birmingham News today over at the Capitol, and I saw a front page article entitled "Minnesota Official Says North Misinformed on Negro in South." I want to read a little bit of it and I would like to have the whole article—it is not very long—printed as a part of my remarks.

Senator ERVIN. The whole article will be included in the record at this point.

Senator SPARKMAN. Yes.

(The document referred to is as follows:)

MINNESOTA OFFICIAL SAYS NORTH "MISINFORMED" ON NEGRO IN SOUTH

By Paul Hogan, News Staff writer

"A lot of misinformation is being sent our way regarding the Negro situation in the South," Milton Rosen, commissioner of public utilities in St. Paul, Minn., said here today.

"We have the impression that Negroes are badly downtrodden and in a suppressed condition down here," Rosen said.

"On this visit, I have seen the Negro schools, golf courses, swimming pools, and other utilities.

"It's a whole lot of misinformation," he said. Rosen said the Negro's status in the South is much better than the impression Northern people have gained.

"Rabble-rousers have told us that Negroes are 'terribly mistreated,' " he added.

"I think it would be a good thing if the South sent responsible representatives to the North to tell us what is going on."

Rosen also pointed out that northern people have the impression that people in the Birmingham area live in "shacks." He said that although he had been here before he had not seen the "fine homes" that cover Birmingham.

He said his city is participating in the urban renewal program, which is being adopted in Birmingham. He said areas near the Minnesota State capital building are being redeveloped under the plan.

Rosen, who first took office as a St. Paul commissioner in 1930, is visiting Birmingham for a look at the United States Pipe & Foundry Co.'s facilities. His city has bought many thousands of feet of pipe from the company and law requires that he look into the plant where the pipe is made.

He said he entered politics when he found that he could not sell merchandise to the city himself.

As a tire dealer he said he found that city contracts were controlled by favored companies. He said that with the help of the FBI we cleaned out every tout in St. Paul.

Senator SPARKMAN. I quote:

"A lot of misinformation is being sent our way regarding the Negro situation in the South," Milton Rosen, commissioner of public utilities in St. Paul, Minn. said here today. "We have the impression that Negroes are badly drowntrodden and in a suppressed condition down here," Rosen said. "On this visit I have seen the Negro schools, golf courses, swimming pools, and other utilities. It is a whole lot of misinformation," he said. Rosen said, "The Negro status in the South is much better than the impression northern people have gained. Rabble-rousers have told us that Negroes are terribly mistreated," he added. "I think it would be a good thing if the South sent responsible representatives to the North to tell us what is going on." Rosen also pointed out that northern people have the impression that people in the Birmingham area live in shacks. He said that although he had been here before he had not seen the fine homes that cover Birmingham. He said his city is participating in an urban renewal program which is being adopted in Birmingham.

I won't take the trouble to read the rest. I thought it was rather significant that this man from Minnesota on a visit to Birmingham apparently was looking for things and saw things that he never had seen before.

I do not condone mistreatment of anybody at any time and I certainly believe that I have worked as hard as anybody during the 20 years I have been in Congress to improve the lot of all of our people.

Senator ERVIN. If the Senator will pardon me, I don't know of any Member of the Senate who has fought harder to try to better housing conditions for colored people as well as for white people. I don't know any Senator that has fought harder than the Senator from Alabama to try to better the economic lot of so many of our people in the South whose per capita income unfortunately is so low.

Senator SPARKMAN. Well, I appreciate those remarks, Mr. Chairman, I am a strong believer, as I have said in my prepared statement here, in the principle of improving economic conditions and thereby strengthen racial relations and remove tensions that otherwise might develop and I have seen development I know from my own experience that it is—at least I believe from my own experience—that it is the most powerful factor that we can possibly have in removing racial tensions and improving racial conditions.

Economic improvements in the South during the past 20 years have demonstrated this fact. Until the distrust and fear of recent months

caused by outside pressures and agitators we in the South enjoyed the best relations of this century.

If the Congress sincerely wants to improve the welfare of the southern minority, if it wants to prevent or lessen racial discrimination, give us in the South the assistance so greatly needed to enable our school children to receive education on par with that of other sections of the country. And I may say many of the other programs that improve the economic status of all our people.

Forced integration won't make for better education—just the opposite; adequate facilities and well-trained teachers in time will do it.

Such a study would also show that the greater the percentage of the minority, the greater is the discrimination. This is not just true of the Negro in the South; it is also true of the Negro in the North, of the Japanese or Chinese in the West, or of the Puerto Rican and the Negro in New York and of minorities wherever they may be.

Since the legislation before you is generally accepted as being aimed at the South, perhaps we should enact laws to provide for Government assistance to resettle any of our Negro citizens that may want to move to other States, especially to those where the percentage of the Negro population is less than 5 or 10 percent of the total population. I may say I have never introduced such legislation as that but it is my understanding that there are bills pending that would seek to do that very thing.

This presently proposed legislation is so far-reaching as to negate the rights guaranteed to persons or individuals under the Constitution.

The legislation would give the Attorney General or certain persons under his supervision the power to intimidate citizens and State and local government officials.

It would hold the accused guilty until he proves himself innocent, the exact reversal of existing judicial practice; it would deprive the accused of trial by jury; it would remove power and control over schools and other institutions from the hands of local people who know the problems best.

There is no individual or group; no Government agency, local or national; no employee, Federal, State or private, that would be free of the whims and fancies, real or imaginary, of the Attorney General and the lawyers he would hire under this legislation.

Nor is the scope of the pending legislation limited to race relations.

It embraces all rights extended to the people of this country by the Constitution and by existing laws.

Congressman Huddleston of my State, Alabama, representing the Birmingham district in testimony already given before the House Judiciary Committee has pointed out that the legislation would cut across and dissipate the power spelled out in current labor laws.

It is difficult for me to believe that all proponents of the legislation now before you really intend to vest such great powers in the Attorney General.

As I read the legislation, however, his power would be almost unlimited. Should he decide to exercise that power for political exploitation or selfish party gain, he would have a weapon that could be used to do great damage to existing institutions and existing constitutional rights.

The people of the South, Mr. Chairman, almost to a man, I believe, are opposed to this legislation. Recent decisions of the Supreme Court that would destroy customs of generations and agitation resulting from these decisions already set back for a generation or more friendly relations that had been built between the races.

Legislative agitation on top of that will simply make for an even worse situation.

A people can be pushed too far. I fear this legislation would do just that.

It is easy, Mr. Chairman, to talk about civil rights. Often in their zeal to enact legislation supposed to deal with civil rights many people seem to forget that the basic civil rights which we have so long proclaimed are the rights of every accused person:

1. To be presumed innocent until proved to be guilty.
2. To be clearly informed of charges that are brought against him.
3. To trial by a jury of his peers.

These are the fundamental civil rights.

These great rights were won by our forebears from kings and tyrants over long years of hard effort—and even bloodshed. These rights we have long treasured and have proudly guarded.

To impair them is to strike at the very heart of our system of justice, which we believe to be the world's best.

This legislation requested by the Attorney General, if enacted into law, would violate and tend to break down these fundamental civil rights.

This must not be done.

Thank you, Mr. Chairman.

Senator ERVIN. I agree with the observations made by the Senator from Alabama in his statement. In my opinion the enactment of these so-called civil rights bills would constitute a great tragedy to the people of this country, both white and colored, even apart from the circumstance that they would enable the Attorney General at his absolute discretion or caprice to bypass and circumvent all substantial constitutional and legal safeguards erected in times past to protect all Americans against governmental tyranny.

The enactment of S. 83 would constitute the second attempt on the part of the Federal Government to reconstruct the South by the force of laws destroying in large measure local government. The proponents of these bills ignore the plain lesson taught by the previous tragic attempt in reconstruction—namely, that you cannot solve racial problems by force of law and that any attempt to do so multiplies racial discord. History shows that it required at least a full generation for the South to recover from the dire consequences of the tragic era of reconstruction. These bills threaten a repetition of that tragic era.

In my judgment, a great disservice is being rendered to the country in general and the South in particular by those people who seek to convince colored people that racial problems can be solved by force of law.

Racial problems can be solved only by patience and good will and intelligence on the local level, where men and women live, move and have their being. These solutions cannot be dictated from above, even by dictators wearing judicial robes or occupying legislative seats.

Mr. WALDEN. Mr. Chairman, would you permit me to make a brief observation?

Senator ERVIN. We will be glad to hear from you.

Mr. WALDEN. I listened very attentively to what the Senator said. In fact I admire him very greatly because a few years ago I did my best to help try to make him vice president of the United States so he knows how I felt toward him personally. But I want to say this. With reference to some of his observations, of course, we realize that you can't change human nature by legislation, but legislation can make it impossible for some people to carry into execution feelings and attitudes that they have with reference to their fellow men and that is all we are asking for. We know this: In order to get the right to serve on juries, that required many years of litigation in different courts. In order to obviate segregation where you live, we had to go through the United States Supreme Court to do that.

That was in the Kentucky case. In order to get the right to sit as jurors we had to go into the courts to do that.

In order to get the right to vote we had to fight the grandfather clauses years ago and then later the white primaries. But for having gone to the courts to do these things, Negroes would be totally disenfrancised under the laws despite the existing law.

We feel that those who are objecting to this type of legislation seem to be more concerned about the feelings of some group than they are about the rights of the others. And these laws are intended primarily so that we could equalize the situation, so that our country can't be accused of preaching one thing in Europe and practicing another thing here.

And the question of race relations, they never arise except in those instances when we are convinced that we have got to insist upon the law in order to get them, and the attention comes on the parts of those people who don't want us to have them.

That is a fact. You have been in the South. I have been in the South all my life, and I know what I am talking about.

Senator ERVIN. Have you finished?

Mr. WALDEN. Yes, sir.

Senator ERVIN. What you have stated tends to prove what I have maintained, namely, that the civil rights of everybody can be enforced under existing laws, which preserve the great constitutional and legal safeguards established by the Founding Fathers to secure all Americans against bureaucratic and judicial tyranny. The proponents of these bills propose to vest in one public official, to wit, the Attorney General, the arbitrary power to determine in the first place whether the proposed new proceedings are to be invoked at all. He is to have the absolute power at his uncontrolled discretion or caprice to grant the supposed benefit of the proposed new remedies to some Americans and withhold them from others. And this is to be done in a land where all men are said to stand equal before the law. If the Attorney General should elect to institute the proposed new proceedings, he would automatically strike down all State laws prescribing administrative or other remedies. And he would do this in the name of equity despite the equitable principle that equity will not act in aid of those who have other available remedies. Litigation is a poor way to promote good personal or racial relations.

This observation finds illustration in an old North Carolina story of the colloquy between two neighbors, A and B, who quarreled about the location of the boundary between their adjoining farms. A said to B, "If you don't concede that my boundary is located where I say, I will bring a suit against you in the superior court."

B said, "That is all right. I will be there when the case is tried." A said, "If I lose that case in superior court I'll appeal to the Supreme Court of North Carolina."

B said, "All right, I'll be there when that appeal is heard." Then A said, "If I lose that case in the Supreme Court of North Carolina I'll appeal to the Supreme Court of the United States." B said, "That is all right, I'll be there when that appeal is heard." And then A said, "Well, then if I lose that case in the Supreme Court of the United States, I'll take it straight to hell." B said, "I won't be there, but my lawyer will."

Mr. WALDEN. Lawyers do sometimes have to go there.

Senator ERVIN. Is Reverend Courts able to stay until tomorrow, because I have to get a little information? I have been requested to ask him a couple of questions.

Mr. MITCHELL. We can do that.

Senator ERVIN. That seems to complete the list of witnesses.

On behalf of the committee I want to thank all the witnesses who have come here today and given to committee the benefit of their views on this very important subject and also observe, I think, it is a fine thing that folks can sit down and discuss these things as we have.

We can disagree as in some cases we do and without getting disagreeable about it.

Mr. MITCHELL. That's true.

Senator ERVIN. I thank all the witnesses for taking the trouble to come and give the committee the benefit of their views.

Mr. MITCHELL. There is one technical question I would like to ask, Mr. Chairman. Several times during Reverend Courts' testimony, you mentioned that he was testifying under oath. As I remember at the adjournment of the committee on last Saturday, there was an agreement that all the witnesses who testified on matters, such as he was testifying on would testify under oath.

I strongly recommand to the committee, after having heard some of the officials who came up to testify before the House, that everyone who comes up here to testify ought to be subjected to that rule because there is a very clear case that the attorney general of Louisiana has given testimony which is in direct conflict with testimony submitted by the Department of Justice. It does seem if this rule were to apply to him, it ought to apply to everybody.

Senator ERVIN. I agree as to those who are giving factual information. Some of this information is opinion, some is factual.

I am a great believer in that. I am a great believer of feeding everybody out of the same legal spoon.

Mr. MITCHELL. I am sure you do.

Senator ERVIN. That is the only security we have. If there's no further witness we will stand in recess to 10 o'clock tomorrow.

Mr. SLAYMAN. We switch again to another room.

Senator ERVIN. We do?

Mr. SLAYMAN. 457.

Senator ERVIN. That is where we started.

Mr. SLAYMAN. No, sir; we have not been in that room, yet.

Senator ERVIN. That will be our sixth room. We have Mr. Hugh Grant, attorney from Augusta, Ga., and Mr. Leland Perez and some ladies, Mrs. Bussey, Mrs. Goss and Mrs. Whitney and Mrs. Renfro from Arlington County, Va., and Mrs. Buchholz from Arlington County, Va. And we will hear Reverend Courts again in the morning.

(Whereupon at 3:45 p. m. the hearing was recessed, to reconvene at 10 a. m. Friday, March 1, 1957.)

CIVIL RIGHTS—1957

FRIDAY, MARCH 1, 1957

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

The subcommittee met, pursuant to recess, at 11:40 a. m., in room 457, Senate Office Building, Senator Sam Ervin presiding.

Present: Senator Ervin (presiding).

Also present: Charles H. Slayman, Jr., chief counsel, Constitutional Rights Subcommittee, and Robert Young, professional staff member, Judiciary Committee.

Senator ERVIN. The committee will come to order.

I might let the record show that on yesterday the Reverend Gus A. Courts was requested to return this morning for further testimony, and further that the Reverend Gus A. Courts is conspicuous by his absence.

Mr. SLAYMAN. Mr. Chairman, I had a letter delivered to me by Senator Hennings' administrative assistant, addressed to him by the Director of the Washington Bureau of the National Association for the Advancement of Colored People which relates to the appearance of Gus Courts.

Now, either you or I could read it into the record.

Shall I read it?

Senator ERVIN. Yes.

Mr. SLAYMAN. This is dated February 28, 1957:

Hon. THOMAS C. HENNINGS,
Chairman, Senate Subcommittee on Constitutional Rights,
Senate Office Building, Washington, D. C.

MY DEAR SENATOR HENNINGS: The Reverend Gus Courts, formerly of Belzoni, Miss., now living in Chicago, presented testimony before the subcommittee today on circumstances surrounding an attempt to take his life while he was still living in Mississippi. He also presented substantial evidence on the specific actions of persons in Mississippi who opposed his right to vote.

As you know, I requested an opportunity for the Reverend Mr. Courts to appear and he has done so at no expense to the Government, although it was necessary for him to make two trips to Washington from Chicago.

It goes without saying that we appreciate the opportunity given him to present valuable testimony on shocking violations of civil rights in Mississippi.

During the period when the Reverend Mr. Courts was examined, Senator Ervin asked a number of questions about his income tax. I respectfully submit that the questions asked were not related to the matter on which he appeared for the purpose of presenting testimony.

Senator Ervin requested that he remain for the afternoon session of the subcommittee to answer further questions. The Reverend Mr. Courts was present but Senator Ervin suggested it would be better to reexamine him on the following day, March 1.

Mrs. Courts is paralyzed and the Reverend Mr. Courts has a heart condition which was caused by the injury he suffered in Mississippi. Because of these things, it has been necessary for him to return to Chicago and cannot be present on March 1.

I would like to suggest that if the subcommittee wishes to have the Reverend Mr. Courts return to Washington some arrangement be made to assure him that his stay will be brief, that his expenses will be paid, and that the questions will be relevant to matters within the jurisdiction of the Subcommittee on Constitutional Rights.

Sincerely yours,

CLARENCE MITCHELL,
Director, Washington Bureau.

Mr. SLAYMAN. I have been directed by Senator Hennings, the chairman of the Senate Judiciary Subcommittee on Constitutional Rights, to say that he knew nothing about this matter before receiving the letter this morning, and directed me, if any question was raised about the appearance of Mr. Courts, to read it into the record, with Senator Ervin's permission.

I have the further impression from Senator Hennings that, not being able to be here at this point in the meeting, he did not himself want to make any ruling in absentia about the matter.

Senator ERVIN. I understand that perfectly because I know Senator Hennings was prevented from attending the sessions of the committee on yesterday by other senatorial duties.

Mr. SLAYMAN. Thank you.

Senator ERVIN. I wish to make these observations concerning the letter.

On yesterday I requested the Reverend Gus Courts to return for further examination this morning, and I was at least impliedly assured by his silence and by the silence of those who had produced him as a witness, that he would return this morning for further examination.

In order that he might not be taken by surprise, I gave the reasons why I desired him to appear for further examination today.

I stated that I desired to ask him the name and address of the auditor who he claimed made out his tax returns.

I also stated that I wanted to ascertain from him the identity of the schoolteacher whose body he asserted had been taken from a lake in Mississippi.

I stated that I had information that the person to whom he apparently referred had been accidentally drowned when an automobile in which she was riding passed out of control and ran into the lake.

Now with reference to the contention that it was not germane to ask the Reverend Gus Courts about his income tax return, I want to point out that Rev. Gus Courts prepared at least 10 days ago a written statement in which he claimed that he had been compelled to leave Mississippi and forsake a business—a $15,000-a-year business.

I did not bring the $15,000-a-year business into this matter. It was brought into this matter by the Reverend Gus Courts and those who assisted him in preparing his written statement.

Whenever a person appears to give evidence, it is always proper to ask him about his evidence for the purpose of eliciting facts bearing on his credibility as a witness, and certainly a man who has a $15,000-a-year business ought to be making income-tax returns to the Federal Government.

Here is a man who comes before this committee and tries to present to the Nation a charge that a lot of members of the colored race had been murdered and cast into the rivers of Mississippi.

When he is questioned about those matters, he claims that three cases occurred, one being the Till case, which of course had no reference to any matter of voting rights.

He has been unable to identify by name any other person, and when he is asked to return to submit to further examination about the identity of these parties and the identity of the auditor whom he alleges filled out his tax returns, he vanishes from the presence of the committee.

He was sufficiently desirous of casting aspersions upon the good people of the State of Mississippi to the extent of voluntarily appearing before this committee twice, but when he is asked to come back a third time and impliedly assures the committee that he will do so, he fails to return.

In this connection I want to call attention to the fact that the Reverend Gus Courts said he had a conversation with Mr. Paul Townsend, a banker of Belzoni, Miss., about voting—Mr. Townsend and two other persons, to wit: Hezikiah A. Fry and Percy Ferr, who he claims made certain threats or implied threats to him.

I want to offer into evidence at this point a telegram addressed to Senator James O. Eastland from Paul Townsend at Belzoni, Miss., dated February 28, 1957, at 1:02 p. m., and reading as follows:

I have never talked with Gus Courts individually or with others about voting. Our bank made him a loan of $300 in March 1955, paid in December 1955. We have never turned down his request for a loan.

(Signed) PAUL TOWNSEND.

Then in order that there may be no confusion about identity, I want to offer for the record a telegram from Paul Townsend, Jr., which was filed at Belzoni, Miss., on February 28, 1957, reading as follows:

Regarding testimony of Gus Courts this is to advise that I have had one conversation with Courts in my life. This conversation was held in my office in the lobby of the Guaranty Bank & Trust Co., of Belzoni, in the presence of Mr. Percy Ferr. I did not send for Courts and so far as I know he came in of his own free will and accord. The conversation was friendly and congenial and had to do with the organization of the NAACP in Humphreys County. It was my suggestion to Courts that in my opinion no good would come from this organization of the NAACP in Humphreys County and that possibly racial friction would develop as a result of it. No mention was made in the conversation of Negro registration or Negro voting nor was any suggestion or threat made to Courts regarding this by me. I am not an official of the citizens council and this conversation was not held at the suggestion or insistence of any officer or member of the citizens council.

(Signed) PAUL TOWNSEND, Jr.

I also offer in evidence a telegram from John D. Purvis, the sheriff of Humphreys County, Miss., filed at 6:26 p. m. on February 28, 1957, and reading as follows:

It has been brought to my attention that Gus Courts testified that a Negro was murdered in Humphreys County in connection with an automobile accident. Diligent inquiry fails to disclose any such incident in past few years. Have contacted State highway patrol and all others who would be in position to have such information. Suggest that witness be asked name of the person murdered and when and where it occurred.

(Signed) JOHN D. PURVIS,
Sheriff, Humphreys County, Miss.

I would like to state in this connection that one of the things I stated as the reason I wanted the Reverend Gus A. Courts to return here today was so he could identify the party he claims was murdered under such circumstances or any other circumstances.

I also offer for the record a telegram from L. S. Rogers, ex-superintendent of education, which was filed at Greenwood, Miss., at 4:13 p. m., on February 28, 1957, reading as follows:

I was superintendent of education in Leflore County for 36 years, retiring January 1, 1956. Statement of Courts in regard to Negro schoolteacher being thrown in lake in 1955 absolutely unfounded and untrue. I have never known of any reprisal against any Negro teacher or any Negro citizen. Such an incident did not occur in Leflore County.

(Signed) L. S. ROGERS,
Ex-Superintendent of Education.

I also offer for the record a telegram from Charles W. Lee, sheriff of Leflore County, Miss., which was filed at Greenwood, Miss., at 2:47 p. m. on February 28, 1957, and reading as follows:

Statement of Gus Courts in regard to Negro schoolteacher being thrown in a lake in this county in 1955 for political activity untrue. Nothing of this nature has happened in this county.

(Signed) CHARLES W. LEE,
Sheriff, Leflore County.

I also offer for the record a telegram from H. H. Dogan, sheriff of Tallahatchie County, Miss., filed at Sumner, Miss., at 3:56 p. m. on February 28, 1957, reading as follows:

In re statements made before your committee that a Negro's body was found in Tallahatchie River or Lakes during the year 1955 is false other than Till case. There were two incidents in 1956. One was Negro boy named Kelly Tyler accidentally drowned near Sharkey. His body was recovered several miles from scene. A coroner's inquest shows he came by his death by accidental drowning. Another case a Negro woman named Beulah Melton lost control of her car and was drowned in Black Bay. There were several Negro witnesses to same. A coroner's inquest shows accidental drowning. Other than these no bodies have been recovered from river or lakes to my knowledge. We have very little acts of violence in my county.

This was signed by H. H. Dogan, sheriff of Tallahatchie County.

I will state this: I am advised that Tallahatchie County contains Glendora, the place identified by Rev. Gus Courts, as where he saw the bodies.

In my opinion this illustrates about how reliable some of the testimony is that we had in support of the so-called civil rights bills, and I want to call attention to another piece of evidence about Mississippi.

I want to offer for the record at this point a telegram filed at Jackson, Miss., at 7 p. m. on February 28, 1957, by James L. Barlow, justice of the peace, in the first district of Hinds County, Jackson, Miss.

Beatrice Young, colored female, paid fine of $12.50 including cost to charge of contributing to delinquent of a minor $8.75 including cost to resisting arrest $8.75, including cost to profane language total of $30 paid this court. Husband of Beatrice Young came into this court and plead his wife guilty. James Young, husband of Beatrice Young.

(Signed) JAMES L. BARLOW,
Justice of the Peace, First District of Hinds County, Jackson, Miss.

During the course of these hearings it was testified that a man in Hayesville Township, Franklin County, N. C. had been denied the right to register because he was left handed.

In fairness to the executive secretary of the National Association for the Advancement of Colored People, who gave that testimony, I would

like to point out that it was stated by him at the time that he had no personal knowledge of the matter and based his testimony solely upon the statement found in the Carolina Times, a newspaper published in Durham, N. C., which newspaper as I understand it is owned and edited and published by colored citizens of North Carolina.

In this connection I want to offer in evidence an affidavit. Which is purported to have been executed by R. G. Winn, registrar, of Hayesville Precinct, Franklin County, N. C., before Elwood Murray, a notary public, on February 26, 1957. Such affidavit reads as follows:

R. G. Winn, address: Route 3, Louisburg, N. C., being duly sworn, says that he is a citizen of Franklin County, N. C., 53 years of age, and for the past 30 years has been the registrar in the voting precinct of said county known as Hayesville Township; that on or about the 28th day of April 1956, John R. Green, a colored man who gave his age as 21 years, applied for registration as a Democrat; that, upon questioning the applicant, this affiant was of the opinion, that, due to his illiteracy and his failure to write legibly, the applicant could not at that time properly qualify; that the applicant stated to him that he was left handed, and that that fact partially explained his inability to write clearly; that, after a friendly discussion with the applicant, this affiant suggested that he wait and probably apply for registration at a later date; that the applicant returned on the following Saturday, bringing with him a copy of the constitution of North Carolina, and after further questioning and examining the applicant as to his ability, this affiant gave him the benefit of the doubt and allowed him to register on May 5, 1956, and his name now appears upon the registration books of Hayesville Precinct immediately preceding the name of Cora Virginia Green, a colored woman registered on the same date;

That subsequently the chairman of the county board of elections, as a result of some complaint, which this affiant feels was entirely unjustified, investigated this matter and declared himself satisfied with the action of this affiant;

That this affidavit is offered voluntarily, not for the purpose of apologizing or offering any excuse, but by reason of the fact that this affiant's attention has been called to references made in the press which apparently have been distorted, and which have probably left a wrong impression upon the public, and which this affiant believes is grossly unfair to the people of Franklin County; that this affiant verily believes that those who attempted to make capital out of this incident are motivated by no worthy or unselfish purpose, but to arouse dissension between the races in Franklin County, which county, within the memory of this affiant, has enjoyed a most friendly and cooperative relationship between the white and colored races.

(Signed) R. G. WINN,
Registrar of Hayesville Precinct, Franklin County.

While I am on the question of inserting matters in the record, I will insert in the record an editorial from the Washington Star for February 27, 1957, entitled "Clinton Contempt Issue," and also an article from the Washington Star of February 28, 1957, by David Lawrence, entitled "Federal Action and Local Issues."

(The documents follow:)

[The Evening Star, Washington, D. C., February 27, 1957]

CLINTON CONTEMPT ISSUE

The American Civil Liberties Union has joined the ranks of those who believe that the Clinton, Tenn. school injunction is too broad, and therefore invalid. This is especially interesting since the ACLU supports the Supreme Court's school ruling and has urged all citizens to obey it.

The ACLU does not question the authority of the court to enjoin "overt acts" which "hinder" or "obstruct" the Clinton integration order. Those committing such acts, assuming proof is available, can be tried and punished for contempt. The injunction goes further, however. It prohibits all persons, acting in concert with certain named defendants, "from further hindering, obstructing, or in any wise interfering with the carrying out of the aforesaid order of this court, or from picketing Clinton High School, either by words or acts or otherwise."

In the ACLU view, as in the opinion of many others, this language is so sweeping, in the absence of a clear and present danger to the maintenance of peace, that it cuts across the first amendment. The difficulty, of course, is in determining where the line is to be drawn between protected free speech and speech which incites to violence. The ACLU points out, however, that the first amendment requires that such a line be drawn, and goes on to contend: "For the sake of our free society, whose freedom is preserved by the free exchange of all kinds and shades of opinion, curbs on the first amendment guaranties should be allowed only when the danger is clear."

If this view is sound, and we think it is, the difficulties which the courts will encounter in the Clinton case become self-evident. The major problem, however, concerns the constitutionality of the injunction itself, and the ACLU has suggested that the pending trial of 16 defendants should be deferred until this question is settled. This has merit in that it could protect the individuals against contempt punishment for violating an injunction which subsequently might be declared invalid.

[The Evening Star, Washington, February 28, 1957]

DAVID LAWRENCE: FEDERAL ACTION AND LOCAL ISSUES

NEW CRITICISM OF UNITED STATES COURT INJUNCTION IN CLINTON (TENN.) SCHOOL CASE IS CITED

It is a matter of news importance when the American Civil Liberties Union, known for its persistent defense of "liberal" causes, criticizes a Federal court injunction in a "desegregation" case.

After the Supreme Court of the United States issued its order throwing out State laws that permitted segregation, the school authorities of Clinton, Tenn., interpreted this to mean they had to bring about a forced association of the races, and they complied with the court's order. But various people in the town spoke in criticism, and some of them allegedly attempted to interfere with the school board's operation. A riot took place near the school grounds, which should have been handled by local police under State laws. But the Federal judge issued an injunction of such broad scope that the Department of Justice arrested 16 citizens and made them defendants on the ground that they had engaged in a conspiracy to violate the injunction. Some of them had merely criticized the injunction and the court decision. Others happened to witness the disturbance. One of them merely offered bail for a defendant and was promptly arrested as a coconspirator.

"Mere advocacy, in the Clinton case," says the American Civil Liberties Union statement, "urging the ignoring of the law or judicial orders, should not be prohibited. As we said at the beginning of this statement, the ACLU supports the Supreme Court decision and urges all citizens to obey it. But if some citizens choose to oppose the decision by peaceful means, through speech, they have the constitutional right to do so. Mere picketing to express a point of view, in the absence of intimidation, should not be enjoined. So we believe the blanket prohibition against picketing of the Clinton High School is invalid. Without direct incitement to definite acts of individual or joint obstructiveness or interference, coupled with a clear and present danger that these acts will take place immediately, the injunction is too broad and interferes with free speech.

"However, the prohibition in the injunction as to overt acts of 'hindering' or 'obstructing' the integration order is different. Such overt acts cannot claim the protection of free speech. Whether or not such acts have occurred is a matter of proof to be determined at the contempt hearing."

This correspondent a few weeks ago called attention to this very defect in the court's injunction and also to the unlawful usurpation by a Federal court of a duty and task that should be performed by local police agencies and State law. There is no evidence that the persons arrested exercised any influence whatsoever on the school board or attempted to interfere with its operations in bringing about a forced association of pupils. All the citizens did was to criticize the injunction and the Supreme Court decision. When an altercation occurred some distance from the school building, it was certainly a usurpation of authority for a Federal court to attempt to apply an injunction to every citizen in the school district as to what he might say in his own home to his friends in criticism of forced association in the schools.

There are some rumors that the Department of Justice now regrets the arrests ordered under the Federal judge's injunction. In the first place, if the judge at the contempt trial charges conspiracy, he will have to convince the public that the conspirators selected a point in front of a police station to carry out their conspiracy to do an unlawful thing. This would be difficult. If they did not all participate and the preacher was struck by a man acting impulsively and, as he claims, because he was shoved aside by the preacher, it will be a hard thing to sentence the bystanders and make such a decision stand up on appeal. In any event, it is difficult to see how the judge can tie up this incident, which occurred some distance from the school, with a violation of his order prohibiting interference with pupils who attended the school.

The American Civil Liberties Union has interested itself often in cases involving arrests for picketing in labor disputes and, as pointed out in these dispatches when the Clinton injunction was issued, precedents are being made which can rise to plague labor unions.

Under the 14th amendment, Congress is empowered to pass legislation to enforce the prohibition against abridgement by a State of the liberties and privileges of a citizen—the basis on which the Supreme Court denounced racial segregation in the schools. But Congress has never acted. The amendment is not self-executing but contains a specific grant of power to Congress. Hence, until Congress does act, neither the Supreme Court nor any lower court can do any legislating and at the same time obey the spirit of the Constitution itself. It is the obligation of the States to preserve order, and they have ample means to do so.

Senator ERVIN. Does anybody want to ask any questions?

(No response.)

The first witness who is scheduled for hearing today is Mr. Hugh G. Grant, attorney at law, Augusta, Ga.

Mr. Grant, the committee will be glad to hear from you at this time. Are you an attorney or not?

Mr. GRANT. Mr. Chairman, I am not an attorney.

I was going to remark that I am highly honored to be invited to appear before this committee. I am also highly honored to be elevated to the legal profession.

Senator ERVIN. I will tell you how you happened to get inadvertently elevated or degraded to that profession.

Senator Sparkman called me and he was under the impression you were an attorney and I transmitted that misinformation to Mr. Slayman and that is the reason.

Mr. GRANT. My only remark in that connection, Mr. Chairman, I might say that I have been very closely associated with many attorneys for many years. I think a little bit of the legal profession has been rubbed off on me, but I am not an attorney.

Mr. SLAYMAN. Mr. Grant, we hope that you did not take offense at this misinformation.

Mr. GRANT. Not at all. As I said, I feel very highly honored.

Senator ERVIN. You may have a seat. I understand you have a prepared statement which you may read or put in the record or supplement it with any oral remarks in any way you desire.

Mr. GRANT. Do you want to swear me in?

Senator ERVIN. No, sir.

Mr. GRANT. I might add, Mr. Chairman, to offset this lack of legal knowledge and legal experience, if the committee will indulge me I would like to give just a few details of my background.

Senator ERVIN. We would be delighted to have you do so, Mr. Grant.

STATEMENT OF HUGH G. GRANT, FORMER UNITED STATES MINISTER TO ALBANIA AND THAILAND, AUGUSTA, GA.

Mr. GRANT. My name is Hugh G. Grant. I am a native of Birmingham, Ala., and for several years a resident of Augusta, Ga.

My early education was in the public schools and Howard College, a Baptist institution in Birmingham. Subsequently I graduated at Harvard University with the A. B. degree, majoring in political science.

Later I attended the George Washington University where I received the A. M. degree in the school of government.

I have engaged in newspaper reporting, radio commentary and educational work, both State and Federal. I was a member of the faculty at Alabama Polytechnic Institute, Auburn, Ala., when Hugo L. Black, Senator-elect from Alabama, invited me to accompany him to Washington as his secretary and assistant.

While in Washington I prepared for the American diplomatic service at the George Washington University, served as political officer in the State Department and subsequently, as United States Minister to Albania and Thailand (Siam).

All of my service was under the late Secretary of State Cordell Hull. I am now officially retired but unofficially, I am devoting practically all of my time to speaking and writing as best I can in the effort to help protect and preserve the rights of the sovereign States pursuant to the Constitution of the United States.

Now if I may be a bit personal, I was one of a small group that organized the State Rights Council of Georgia, Inc., following, what I choose to call the infamous Supreme Court decision of May 17, 1954, declaring segregation in the public schools unconstitutional.

I was the first president of the council and I am now a member of the executive committee. I am also a member of the national policy committee of For America and the executive committee of the Federation for Constitutional Government.

Now since I am not a lawyer, and in view of the fact that I have pursued courses in government and political science and have taught political science and was a radio commentator and a newspaper reporter a good many years ago, I want to approach this subject today from a little bit different angle than the strictly legal position.

I might add, Mr. Chairman, that if I were a lawyer, there would be nothing left for me to say here today as a witness on the legal aspects of this subject, since my colleagues, Attorney General Eugene Cook and Charles Block, a prominent lawyer of Macon, Ga., I believe, have presented before this committee very able arguments going into the details of the legalistic aspect of this question.

I speak here today as an American citizen who is very profoundly disturbed over the situation confronting the American people, both at home and abroad. I am of the opinion that the American constitutional Republic, as established by those far-sighted Founding Fathers and which has resulted in the development of this great Nation of ours, is in grave danger of destruction.

The forces that could destroy this Republic are threatening, simultaneously, both from within and without. The so-called civil-rights bills which are now before this Senate committee and a House committee constitute a part of the internal threat, in my judgment.

On the international front—if I may digress for perhaps just a few minutes—the recent flareup in the Middle East has brought into sharp focus the startling fact that the United States of America, leader of the so-called free world and dominant and principal financial supporter of the 80-member United Nations, today stands practically alone in the global cold war with Soviet Russia.

In the terrible event of world war III, it appears likely that the United States, with only an infinitesimal percent of the world population, would find itself carrying most of the war load and bearing the brunt of the armed conflict for the free world.

As pointed out recently in U. S. News and World Report, any warlike move in any one of 60 foreign countries commits this Nation to action whether we have taken any part in these moves.

This area includes all of North and South America, nearly all of Western Europe and all of the vast Pacific as well as the Atlantic area. We are definitely committed through "defense alliances" to 42 foreign countries. We could become involved in one or more "hot wars" in remote sections of the world at any moment.

In other words, 170 million Americans are committed to defend and help 60 nations with a combined population of 1½ billion people, or about 61 percent of the world population. In my judgment, we are greater overextended militarily, far beyond the needs for our own adequate defense, and there is some very reliable and expert military support for this viewpoint.

This global situation in which we find ourselves is definitely linked with the alarming state of affairs here on the homefront, which includes this question that is being considered by this committee.

The national debt of some $275 billion as compared with about $1 billion in 1917, the year we entered World War I, "to make the world safe for democracy," as we thought, staggers the imagination.

The present debt is about $10 billion more than it was in Eisenhower's first year in office, June 1953.

Since the end of World War II in 1945 the United States has given away to foreign countries the enormous sum of $60 billion and the Santa Claus handouts continue at the rate of $4 to $5 billion a year, although the American people were told 10 years ago that the Marshall economic aid plan would mark the end of the giveaway program.

Nikolai Lenin, leader of the Russian Bolshevik Communist Revolution in 1917, said:

> We will force the United States to spend itself to destruction.

Is it possible that the master minds in the Kremlin are today following the Lenin strategy in prosecuting the cold war with us?

Linked with this vast overseas giveaway of billions of dollars extracted from the harassed American taxpayers is a rapidly developing welfare state on the homefront. There is more and more planned economy under highly centralized Federal controls in Washington made possible by the collection of vast funds, through confiscatory taxes, inflationary borrowings, and unlimited deficit spending to subsidize powerful pressure groups.

There is also an organized conspiracy to break down our well-established immigration laws in order to bring in more foreigners, some of doubtful antecedents, for the "gravy train" and to increase the political strength of the minority groups which are agitating for this

civil-rights bill, already swarming in our big metropolitan cities like New York—all at the expense of our fundamental American traditions and concepts.

The net effect of all this is a chipping away of the individual liberties of the American people by Executive order, bureaucratic decrees, and judicial edicts emanating from Washington.

The whole program tends, at an ever-accelerating pace, toward totalitarianism, fascism, socialism, the police state, and communism.

Last November 6, 1956, on the 38th anniversary of the Bolshevik revolution, the spokesman for the Soviet Government, Lagar Kaganovick, told a cheering selected audience of Government leaders in Moscow that:

This present century would see the triumph of communism whose ideas are spreading throughout the world—

and the speaker added—

No one can break the close ties linking the Soviet people with the broad masses and working classes of all countries of the world.

And undoubtedly this Soviet Government spokesman had his eyes cast in the direction of the United States of America.

There is no doubt in my mind that these so-called civil-rights or force bills, now pending before the Congress, have the active backing of the international Communists and that the design is to stir up tension and strife and violence and bloodshed in this country.

Only 3 weeks ago the American Communist Party, meeting in New York City, heaped praise on the National Association for the Advancement of Colored People and boldly called on President Eisenhower by telegram to issue—

a new Eisenhower doctrine for the enforcement of Supreme Court desegregation decisions.

That is the end of the quote from the telegram of the Communist Party meeting in New York, to President Eisenhower.

South Magazine, published in Birmingham, reported that—

Attorney General Brownell, front man for the administration's so-called civil-rights program and liberals of both parties in Congress winced at the Red manifesto—and at Southern darts and jibes about the company in which they were traveling.

The Communist Party request to President Eisenhower was not devoid of logic, since Mr. Eisenhower, despite his forthright utterances in support of States rights during his first campaign for the Presidency in 1952—some of you remember those—has given continuous encouragement to the NAACP—by attending an NAACP meeting; by his appointment to the Supreme Court of Chief Justice Warren, who subsequently brought in the unanimous verdict of the Court for race-mixing in the public schools of the Nation; by his—I am referring to Mr. Eisenhower—his sponsorship of speedy integration of the Washington City schools with a view to creating "a model for the rest of the country"—a plan which has created chaos in the Nation's Capital—and by his about-face on integration in the armed services.

When Eisenhower was a general he was against race mixing—he testified to that effect before the Senate Armed Services Committee back in 1948—but when the Presidential bug bit him he went all-out for it, completing the job ordered by President Truman by Executive order in 1948.

The Negro bloc vote and not the welfare of the men and women in uniform was the motivation in both instances. This integration in the Armed Forces is one of the most potent weapons in the hands of the NAACP and its race mixing white allies who are pulling hard for this civil rights legislation during this session of Congress.

The Communist Negro drive in the United States began back in 1920, according to testimony of James W. Ford, Negro Communist leader, before the House Un-American Activities Committee in 1947. The Communist Party's Fourth National Convention—the one held in New York the other day was the seventh—stated that the party had penetrated the NAACP.

In 1928 many Negroes were sent to Russia for training in revolutionary tactics, according to Manning Johnson, reformed ex-Communist Negro leader, in the American Mercury, February 1955.

In 1948 Henry Lee Moon, public relations head of the NAACP, wrote a book entitled, "Balance of Power, the Negro Vote." I have a copy, here it is. It is a sort of Negro Mein Kampf, with many illuminating quotes. Here is a significant one:

> The Communist Party sees in the Negro an important potential ally in the struggle for a revolutionary upheaval and redistribution of wealth and power. Accordingly, Communists have devoted more attention and energy among colored citizens than to any other non-Negro group seeking basic reform since the heyday of the Garrisonian Abolitionists.

In the infancy of CIO–PAC, Henry Lee Moon went to work as assistant to foreign-born Sidney Hillman who was an organizer and vice president of the CIO. Hillman as some of you may recall, played a most important part in the selection of Senator Harry Truman as the running mate of President Roosevelt in 1944.

After F. D. R. sent word to his lieutenants at Chicago to "clear it with Sidney," Truman was nominated for Vice President in lieu of James F. Byrnes. Author Moon was recently reported a few weeks ago to be in the office of Roy Wilkins, executive secretary of the NAACP, successor to the late Walter White, whom I used to see many years ago lobbying in the Halls of the Congress here in Washington.

It was Wilkins who, on February 19, was reported in the press as having told this Senate subcommittee that he could "not predict what mood might be engendered" among southern Negroes if they do not get "a minimum guaranty" of constitutional rights.

This statement of the executive secretary of the NAACP, Roy Wilkins, in my judgment, sounds very much like incitement to violence on the part of the southern Negroes, as well as a threat against the Congress.

> If you don't pass this legislation, look out, there is going to be trouble from the Negroes of the South.

That was the directing head of the NAACP, Roy Wilkins, in his testimony before this subcommittee as I read it in the press a few days ago.

I do not believe the Wilkins statement reflects the true sentiments of the rank and file of southern Negroes whose relationships with the white people have been friendly throughout the years.

Recently I received copy of a Negro newspaper published in Mississippi which carried on its front page a commendatory article about a speech which I made before the law students at the University of

Georgia, in which I said the Negro needed to develop pride of race through segregation rather than attempting race mixing in an integrated society.

I am of the opinion that the great majority of real Negroes in the South are not seeking integration and would rather not have it.

I recall a conversation which I had several years ago with the late Dr. Robert R. Moton, who succeeded Booker T. Washington as president of Tuskegee Institute in Alabama. I was an official visitor at Tuskegee as a member of the Alabama State Department of Education.

Dr. Moton, the president of Tuskegee, was a big physically fine-looking fullblooded African. We talked about the race question. Dr. Moton said he was "a Negro, not a colored person," that he was proud of the fact that he belonged to a distinct race of people and that his ambition was to make a contribution to his race.

He said he had no desire for social equality with white people and that he believed the system of segregation as practiced in the South was best for the Negro, since it enabled him to develop pride of race through cooperation and competition with members of his own race.

That is a great Negro leader speaking, many years ago it is true, and unfortunately he has passed on. He was the successor to Booker Washington, the head of this great Tuskegee institution.

Senator ERVIN. Mr. Grant, if I may interrupt you without detraining your train of thought, I would like to make an observation. One of the former Governors of North Carolina told me a short time ago of statements made to him by Dr. Shepherd who was president of one of our colleges for Negroes in North Carolina, the North Carolina College in Durham.

He said Dr. Shepherd told him that he believed that the Negro race would work out its destiny in North Carolina to the best advantage if the public school system remained segregated.

I did not have that conversation myself with Dr. Shepherd. In my judgment, Dr. Shepherd is entitled to rank among our foremost educators in North Carolina.

He did a wonderful job. He was for a long time president of this college in Durham which is now entitled in my judgment to rank among the best universities.

Mr. GRANT. Thank you very much, Mr. Chairman.

I have not put this in my manuscript here, but let me add in this connection that I was so much impressed with what Dr. Moton said to me, which I have quoted here in substance, that months before the Supreme Court decision was handed down ordering the outlawing of segregation in the public schools, because of my very close association with Senator Hugo L. Black in Washington during his first term in the Senate, I sat down and wrote a letter to Justice Black.

This was several months before the Supreme Court decision.

I had a certain personal relationship with Judge Black. We had known each other in Birmingham as young men. I called him Hugo and he called me Hugh.

I wrote him a letter and quoted this conversation that I had had with Dr. Moton that I have just mentioned here. I said:

Since you and your associates are considering this momentous question of segregation, you are coming down with the decision before many months, I though you would be interested in knowing what one of the great Negro leaders in America thought about it—

and I quoted this conversation I had had with Dr. Moton that I have given to you.

Well, to my great surprise and consternation, in about 10 days I received a reply. This is not personal. I received a reply from Justice Black in which he said that since he was a Justice of the Supreme Court, that he had read only the first paragraph of my letter, indicating that I was going to quote in the second paragraph what Dr. Moton, this great Negro leader, had to say about segregation. He had read the first paragraph, had seen what I was going to say, and then he put the letter aside. He could not read what Dr. Moton had to say. He could not consider anything, as a Supreme Court Justice, unless it was filed as an official brief to the Supreme Court.

I replied to Justice Black along these lines: I said "This is amazing to me. I thought you, as an Alabaman, would be glad to get this information about Dr. Moton's views on segregation."

I said, "If you follow the course that you have outlined in your letter, that you cannot as a Justice of the Supreme Court consider any information, anything at all unless it is filed in the form of a brief, then in my judgment you and every other Justice on the Supreme Court would have to shut yourselves up in a cloister. You would have to turn off the radio. You could not see a newspaper. You could not read a magazine, because the newspapers and the magazines and the radios and the television all comment on this segregation issue that you gentlemen are now considering."

I said, "It is impossible in my judgment for you gentlemen to shut your minds to anything, any information, other than what comes into the Supreme Court in the form of an official brief."

Now since I am not a lawyer, Mr. Chairman, I may be wrong about that but that seemed to me to be the commonsense viewpoint to take on a thing of this sort.

This program of Dr. Moton is a far cry, Mr. Chairman, from the program of the leaders of the NAACP, who want complete integration all along the line—in the schools, in housing, in churches, in parks, in playgrounds, in swimming pools, in restaurants, in hotels and moving pictures.

The ultimate goal of the NAACP is a leveling off of our American society into a common racial mold, a colored race, eliminating all racial distinctions on the false theory that this constitutes democracy.

The plan has worldwide implications. We hear so much talk today about one race and one world. There are signals of it in the United Nations in such sections as UNESCO.

Just a few days ago a Negro pastor of a Jersey City church said in a prepared radio address that if President Eisenhower does not speak out on "racial violence in the South," this pastor said he and other members of the Negro clergy in Jersey City and elsewhere will take the matter to the United Nations.

And he said this:

We note with dismay, disillusionment, and deep sorrow, your failure to answer the ringing cry for freedom for the colored and white people of the South.

What nonsense. This threatened appeal to the United Nations by the Negro preacher and his colleagues would seem to imply that the agitators for race mixing in the United States are ready to go completely around the constituted authorities of this American Repub-

lic—including these committees in the Senate and the House, including the Members of the Senate and the House, if necessary, to get what they want, appeal to the United Nations.

This gentlemen is world government. This is right down the alley in my judgment of the international Communists.

As everyone knows, the spark for this mounting racial tension and strife in this country, North and South, although the major battle-front is in the South, the conflict is actually not sectional but national.

This racial question is national. The spark, as I started to say, was touched off by the Supreme Court decision of May 17, 1954, when the nine Justices threw all the law books, together with the Constitution and the Bill of Rights, out of the window if you please, in ordering the end of segregation in the Nation's public schools.

This was race mixing with a vengeance.

The Supreme Court decision, if I may be personal here, was so repugnant to me—such a palpable miscarriage of justice—that on the day it was announced by Chief Justice Warren, I got off a telegram to Associate Justice Hugo Black, who had been appointed to the Bench by President Roosevelt, his first appointment, while I was in the diplomatic service in Europe.

I was with Senator Black here in Washington as his secretary and administrative assistant during his first term in the Senate. I had gone into the State Department and later was sent overseas, and when Senator Black was appointed to the Supreme Court, I was in Europe.

Here is the text of my wire to Justice Black, incidentally as inserted in the Congressional Record by Senator Eastland, the distinguished chairman of the Senate Judiciary Committee:

AUGUSTA, GA., *May 17, 1954.*

HON. HUGO L. BLACK,
Associate Justice, United States Supreme Court,
Washington, D. C.

It is incomprehensible to me that you a native Alabamian and a stanch supporter of States rights when you were elected to the United States Senate by the white people of Alabama, could join in the political and, in my judgment, unconstitutional Supreme Court decree against segregation of the races in the public schools of the States. I am sure a way will be found to circumvent the enforcement of the Court's decree, and I will join the forces working toward this end.

HUGH G. GRANT.

I have never received a reply from Justice Black.

Senator Eastland, who from the beginning of this great controversy arising out of this Supreme Court decision, has ardently crusaded for the preservation of the rights of the people of the Sovereign States of the Union under the Constitution, in the face of bitter denunciation and abuse from the NAACP and leftwing pressure groups, Senator Eastland said that the Supreme Court Justices who ordered the mixing of the races in the schools had been brainwashed.

Certainly, something of the sort must have happened to Hugo Black who, when I was closely associated with him in Washington—and I am telling you the truth, Mr. Chairman— from 1927 to 1933, was an ardent champion of States rights, fearful of encroachments upon the States by the Federal Government, as he indicated to me in many of our private conversations.

He was a great disciple of Thomas Jefferson who believed as I recall the least government the better, and against all forms of centralization of power in the Federal Government in Washington.

Furthermore, Senator Black was a strong believer in the fundamental American system of the right of trial by jury, which would be abandoned as I understand it in this legislation if it is enacted into law.

As Senator Black also indicated to me in the course of our many private conversations, I remember in Alabama we were camping there and he was talking about the jury system, how although it did not always work out perhaps, that it was fundamentally sound and was the only system that would bring about justice in the last analysis.

You know I have wondered what went on in the brain of Justice Hugo Black when a few weeks ago press notices told of the weird events occurring at Clinton, Tenn., with a Federal Judge issuing an edict that anyone who speaks his mind in urging nonattendance at a mixed school in Clinton may be guilty of contempt of court—in other words, a blanket injunction by a United States judge, under this Supreme Court decision, against the whole people of a community.

As David Lawrence, the distinguished editor of U. S. News & World Report, declared a few weeks ago:

This edict means that, without a trial by jury, citizens in supposedly free America can be put in jail for their utterances. Free speech is thereby squelched and thought control imposed.

Prior to the Supreme Court decision on school segregation, Attorney General Brownell had advised the Court to bypass the Congress and end segrgation by judicial decree. This was much the easiest way to get the job done, in other words.

"I am not so sure of Congress but pretty sure of the Supreme Court," especially after Mr. Justice Warren was put on that Supreme Court by Brownell upon his recommendation to the President.

In my opinion Brownell's advice to the Court to bypass the Congress and issue this school segregation decree by judicial edict was a violation of one of the fundamental principles of our unique and successful system of federal government, namely, the separation of powers between the three divisions of the Government, the executive, the legislative, and the judicial, through the plan that we call the "system of checks and balances."

The Supreme Court, under the leadership of the new Republican appointee to the Chief Justiceship, Earl Warren, followed the advice of the Attorney General. The decision was unanimous, to the great surprise of many oldtimers on Capitol Hill.

I remember getting a letter from Senator John Sparkman of my State. I had written John Sparkman whom I have known for 30 or 35 years. I wrote to John Sparkman. I said "What is going to happen? What is the Supreme Court going to do about this Supreme Court decision?"

That was months before the decision was handed down.

Senator Sparkman replied to me, he said "Well, you just can't tell. It looks like it is pretty evenly divided. It looks like it may be a 4 to 4 vote with the swinging vote to carry it one way or the other."

That was one of your distinguished Senators here in Washington who said that severals months before the decision.

However, although the decision was unanimous, compliance with the Court verdict was something else. Bewilderment—and I speak from personal experience in the South since this decision—bewilderment and confusion reigned in the Deep South States, but there gradually developed a determined resistance movement led by an organization known as the Citizens' Council in Mississippi.

One year after the initial decree outlawing school segregation, the Supreme Court on May 3, 1955, handed down its desegregation decree, in other words passing the buck to the Federal lower courts for compliance with "all deliberate speed."

The administration of the public schools was now taken out of the hands of the State and local authorities and turned over to the Federal judges—an ominous milestone in the road leading to the destruction of the American Constitutional Republic, in my judgment.

Well, you know nearly 3 years have elapsed since the initial Court decision in 1954, declaring segregation in the schools unconstitutional, and yet today there is still no race mixing in any of the public schools of 8 Southern States, Virginia, North and South Carolina, Florida, Alabama, Mississippi, Georgia and Louisiana, 3 years after that decision.

There is growing resistance in such border States as Arkansas and Kentucky. I was in Kentucky last week and saw first hand—as you know I received your telegram out in Kentucky, Mr. Chairman—I was in Kentucky last week and saw first hand what the people of Union County, in western Kentucky, where some trouble developed last fall when Governor Happy Chandler, lining up with the Supreme Court decision, attempted to force integration by use of the State militia.

These people in Morganfield, the county seat of Union County and Sturgis, where this trouble occurred last fall where they tried to integrate, have purchased an abandoned school house, have enlisted some school teachers and plan to open their own private school next fall if a Federal judge order for desegregation goes into effect.

I have never seen more determined people in my life than those people out there is western Kentucky, and yet we have had the impression in the press and in some of the magazines that Kentucky, being a border State, was being rapidly desegregated. It is not.

And so with the Supreme Court mandate for deliberate speed in desegregating the schools, anything but speedy in effect, what do we witness?

The Attorney General, following up his appearance before the congressional committees last year, acting in the interests of the NAACP and its allies, and for the purpose of consolidating the political gains made in the November general election by his party in the matter of recapturing the Negro bloc vote from the Democrats, comes into this Congress advocating so-called civil-rights bills which, as Georgia's Attorney General Eugene Cook said here a few days ago, would result in creating a Federal Gestapo.

This testimony of Attorney General Cook in my judgment bears repeating, just one paragraph:

> Enactment of this legislation would result in creation of a Federal Gestapo which would hold needless investigations, pry into the affairs of the States and their citizens, and intimidate a majority of our citizens solely to appease the politically powerful minority pressure groups inspired by the Communistic ideologies of the police state.

Another statement made before the House subcommittee by a former FBI top official, Edward Scheidt, of North Carolina, your State, Mr. Chairman, also bears repeating with emphasis.

Said Sheidt, before this committee:

> The application of this measure is not limited to situations affecting race, color, religion or national origin. It is a frontal attack upon the police powers and responsibilities of all local and State governments—it is a Pandora's box which threatens to shake the very foundations of law enforcement in the United States.

That is a former top official of the Federal Bureau of Investigation from North Carolina.

Obviously, Mr. Chairman, one of the principal objectives of the proponents of these so-called civil-rights bills is to make the South the whipping boy—force these Southern States to speed up the lagging school desegregation program decreed by our sociologically-minded Supreme Court.

As Edward Sheidt has pointed out, the civil-rights program is not sectional but national in scope, constituting an attack upon the police powers and responsibilities of the local and State governments—North, South, East and West.

This thing is national, it is not sectional.

Aldrich Blake, whom I had the privilege of meeting and talking with, distinguished California author, asserts that a civil-rights revolution is now taking place throughout the United States, that 19 Northern States have already adopted so-called civil-rights codes which, he adds—Blake adds—ought to be called civil-wrongs codes, since, and I quote Mr. Blake—

> their purposes are becoming increasingly menacing to the individual freedoms and private property rights of American citizens.

For example, Mr. Blake points out white employers in Northern States today hesitate to employ a white applicant over a Negro applicant, since if rejected the Negro can sue on the grounds of race discrimination, whereas the white applicant has no recourse in court.

Blake defines a "civil right" as a "civil wrong" in the nature of a special privilege granted to some minority group.

I believe there are some 17 different so-called civil-rights bills under consideration by this Senate subcommittee.

There are other bills over on the House side. I understand also that there is a voluminous omnibus bill. Although it would likely be difficult for the proverbial Philadelphia lawyer to correctly appraise, analyze and coordinate all of these so-called civil-rights bills, there have been many excellent analyses of these proposed civil-rights legislation by a considerable number of very able constitutional lawyers, including distinguished Members of this Congress and States attorneys general.

Let me say this, if I may. It is to be earnestly hoped that these analyses by these gentlemen, Members of Congress and attorneys general and other distinguished lawyers like Judge Perez, who is going to follow me here, I believe, that these legal analyses of these civil-rights bills will be very carefully studied by all Members of the Congress whether or not they are members of these Senate and House Judiciary Committees which are considering these bills.

Briefly and in very general terms, with variations, the principle provisions of this proposed civil-rights program as I have attempted

to coordinate it would, first, set up a new, special Division on Civil Rights in the Justice Department under an Assistant Attorney General, which it appears would result in the addition of more and more attorneys and agents and the creation of more and more Federal bureaucratic interference in State jurisdictions.

Two, establishment of a new so-called bipartisan commission in the executive department which would have wide and unlimited authority to delve into the affairs, into the private affairs of individuals, groups and firms, upon receipt of any reports from anyone of alleged violations of civil rights, with a provision for subpena and citation for contempt, and with no right of appeal.

Three, make it possible for the Federal Government, through the Attorney General, to participate in the matter of establishing voting qualifications in the States in connection with any general, special or primary election for Federal offices.

Let me pause right there and just say this: that these men who are elected to office, Federal office in the Senate, in the House and elsewhere, they are State officials as well as Federal officials.

They represent the States. It seems logical to my lay mind that the States should have exclusive jurisdiction and not the Federal Government setting up the qualifications and seeing to it that the State laws regulating registration and voting are all right, and yet the civil rights bills would have the Federal Government through the Attorney General snooping into the States deciding who shall vote and who shall not vote.

The injunctive power would permit the Attorney General to seek court orders, in advance of an election, think of it, in advance of an election, in order to halt any alleged illegal interference in registration or voting in the sovereign States.

Four, allow private citizens to go directly into Federal courts with any complaints of alleged denial of civil rights and allow the Justice Department to bring suits against alleged conspiracies to violate civil rights.

In conclusion, Mr. Chairman and members of the committee, dipping back just briefly into the history of this Nation, sturdy, courageous, freedom-loving Anglo-Saxon white people from Great Britain and northern Europe settled the American colonies in the 17th and the 18th centuries.

British centralized governmental bureaucracy followed them, and in order to maintain their freedoms and liberties, these white pioneers reluctantly developed aggressive opposition to the British system of oppression.

That culminated in the Declaration of Independence in 1776. The men who wrote that declaration risked their necks if you please, to write it, to declare their independence, to get out from under these oppressive, bureaucratic rules and regulations in law.

That culminated in the American Revolution, in military victory against great odds and finally in the establishment of the American Republic under a written constitution.

The central core of this constitution, gentlemen, was the establishment of a Federal union with very limited jurisdiction, leaving broad powers to the States for the preservation of local self-government for the people of the respective States.

So fearful were these wise and gifted representatives of the Thirteen States of encroachments upon the inherent liberties of the people by the new Federal Government that, within a very short time after the adoption of the Constitution—something like 2 years I believe after the adoption of the Constitution—these men added 10 amendments, these men representing their States, added 10 amendments to the Constitution, known as the Bill of Rights.

In the short space of 168 years, the people of this American Constitutional Republic have prospered, individually and collectively, developing a great nation under this unique governmental system.

One may describe this proposed legislation, now pending in congressional committees, as a plan to protect the individual rights of the people and for their welfare.

One may call this program civil rights or constitutional rights or anything else, but the stark fact is that it is nothing of the kind.

This so-called civil rights program is a direct assault against the liberties of the people as guaranteed by the Constitution of the United States.

If enacted into law by the Congress this program will take away the liberties of the people of the United States and prove to be a boomerang to the very people who are advocating it.

This so-called civil-rights program, by centralizing all authority over the people in the Federal bureaucracy in Washington, would complete an insidious movement that is already well under way—as I indicated in my opening remarks—the destruction of the American Constitutional Republic and the substitution therefor of a centralized communistic police state comparable to the system prevailing in Soviet Russia.

Mr. Chairman, I thank you and your fellow members for the privilege, the high privilege and high honor of appearing here to give you my views on this great and important subject.

Senator ERVIN. Mr. Grant, on behalf of the subcommittee, I want to thank you for appearing and presenting your views.

I will ask you this one question: Do you not find this lesson inscribed on each page of political science and history, namely, that the deadliest foe to liberty is government itself?

Mr. GRANT. Exactly.

Senator ERWIN. We will recess now until 2:30.

(Whereupon, at 1 p. m., the committee was recessed, to reconvene at 2:30 p. m. of the same day.

AFTERNOON SESSION

Senator ERVIN. The subcommittee will come to order.

Judge Perez has very kindly consented for me to displace him in favor of the ladies who are here to testify, so we will be glad at this time to hear from Mrs. Ray Whitney.

Mrs. Whitney, I understand that you and other members represent the Organized Women Voters of Arlington County, Va.

Mrs. WHITNEY. Yes, sir.

Senator ERVIN. The committee is glad to have you all present and will be glad to hear from you at this time.

STATEMENT OF MRS. RAY WHITNEY, REPUBLICAN MEMBER, LEGISLATIVE COMMITTEE, ORGANIZED WOMEN VOTERS OF ARLINGTON COUNTY, VA.

Mrs. WHITNEY. This is the resolution that was unanimously passed by the Organized Women Voters of Arlington County. The resolution is:

Whereas there is pending in the Senate of the United States a bill designated as Senate bill 83, and the Goldwater amendment thereto; and

Whereas there is pending in the House of Representatives of the United States a bill designated as House bill 1151; and

Whereas both bills provide less freedom to exercise the rights guaranteed by the Constitution; and

Whereas quoting Senator Mansfield, (the Congressional Record, February 19, 1947, p. 1982), " * * * the Senate as a body will likewise remember that what we do today or what we may not do may have repercussions decades and centuries hence;" and

Whereas there is no adequate provision made in the bills for the women of America, the aged, the American Indian, veterans, and handicapped persons; Now, therefore, be it

Resolved by the members of the Organized Women Voters of Arlington County, Va., a bipartisan group, in regularly monthly session assembled:

"1. That if the Congress deems it necessary, the Congress shall establish a joint committee to be composed of Members of the House of Representatives and the Senate of the United States.

"2. That any legislation protecting the rights of citizens that may be enacted make adequate provision for the women of America, the aged, the American Indian, the veterans, and the handicapped persons.

"3. That the Congress defeat Senate bill 83 and House bill 1151, or any bill which would usurp the authority delegated to the Congress by the Constitution of the United States in section 5, article 14.

"4. That no Federal funds be appropriated for any litigation in connection with these bills, which would, if provided, place a tremendous burden upon the taxpayer.

"5. That copies of this resolution be forwarded to the President of the Senate of the United States, to the Speaker of the House of Representatives of the United States, to each Member from Virginia in the Senate of the United States and in the House of Representatives."

Senator ERVIN. Mrs. Whitney, as I understand it, this resolution was adopted by the Organized Women Voters of Arlington County, Va.?

Mrs. WHITNEY. Yes, sir.

Senator ERVIN. On behalf of the committee I think you for coming before us and presenting us with this resolution.

The committee would be glad at this time to hear from Mrs. Bussey.

I understand that you will make a statement and also introduce the other members of the committee.

Mrs. BUSSEY. Shall I introduce the others now?

Senator ERVIN. No, you can wait until you have finished, when they come to present their statements.

STATEMENT OF MRS. LUCY BUSSEY, PRESIDENT, ORGANIZED WOMEN VOTERS OF ARLINGTON COUNTY, VA.

Mrs. BUSSEY. I wish to speak on the Goldwater amendment.

I am Lucy Bussey, president of the Organized Women Voters of Arlington County, Va., a bipartisan organization whose membership is made up of women who have come to Virginia from almost every State in the Union.

They bring with them a wholesome respect and love for the rights of their State laws and do not wish those laws to be reduced only to such powers left to them as the Federal Government may choose to allow.

They feel the Federal Government has no right to set up a commission conflicting with the State constitutions and law because without individual States there would be no United States.

Our organization notes that Senate bill designated 83 as originally submitted states:

> The Commission shall investigate allegations in writing that certain citizens of the United States are being subject to unwarranted economic pressures by reason of their sex, color, race, religion, or national origin—

and being alert women they are alarmed at Senator Goldwater's amendment deleting the word "sex."

The use "unwarranted economic pressures" with reference to sex here could only apply to women since economic pressures have never been used against a man because of his sex.

The deletion of the word "sex" could only have the effect of avoiding an investigation of a written allegation of unwarranted economic pressures against women.

Women are capable of great personal sacrifice for the welfare of the helpless and dependent. They are straight thinkers and have great potentialities of service in public office; in business; in civic, moral, and spiritual leadership. But their potentialities cannot be achieved if prohibited by unwarranted economic pressures.

Let the record show that this organization is not contending that it is necessary to have a commission of this kind; but let the record show that we are contending that if such a commission is necessary for other groups named, then it is vitally important to include the word "sex."

For there are women today who well remember the past struggle to obtain suffrage, the struggle to obtain jury service, and the ever-present struggle to obtain equality in jobs.

If the Commission is necessary to protect the rights of the groups named in the amendment, then the word "sex" is necessary to protect the rights of not only the women of this generation, but of those of the coming generations.

Since women are capable of great personal sacrifice for the welfare of the helpless and dependent, as women we are concerned with a commission to be set up without specific reference to and with no clarity concerning the forgotten real Americans, the American Indians.

Mr. Chairman and members of the committee, are we to understand that this commission that is proposed will concern itself with investigating as its first order of business the existing grievous wrong against the American Indian?

Will the Commission usurp the authority of the Commissioner on Indian Affairs with respect to the civil rights of Indians, the Commissioner who, according to the March issue of the Readers Digest, offers the Indians for the first time a future not as wards of the Government but as full-fledged self-respecting citizens? Will this Commission assume the authority that now is vested in the Bureau of Indian Affairs.

Senator ERVIN. Pardon me. At this point I am going to have to answer another live quorum call. You might proceed with your statement and I will be back shortly.

Mrs. BUSSEY. I am sure that nothing need to be said to you good gentlement about the aged people. Without doubt, that is a thought presently uppermost in your minds along with the veterans and the handicapped.

In conclusion, it is the desire of this organization of women that it be made irrevocably clear that we women are not contending for one split second that a commission of this kind is needed. Rather, a statement to the contrary will subsequently be made here by a representative from our organization.

However, it is the desire of this organization of women that it be made clear beyond a shadow of doubt that, if a commission be set up to protect the rights of the citizens, adequate provision be made for the women of America, the aged, the American Indian, the veteran, and the handicapped.

Mr. Chairman and members of the subcommittee, we wish to thank you for this opportunity afforded us to express our opinion on this vital subject.

Mr. SLAYMAN. Than you very much, Mrs. Bussey. Do you want to introduce the other ladies with you?

Mrs. BUSSEY. Well, Mrs. Renfro is a Democrat from Virginia. She originally came from Tennessee. We are bipartisan. That is why I am emphasizing that.

Mrs. Whitney, who has just spoken to us, is a Republican, originally from Pennsylvania.

Mrs. Goss, who is the chairman of our legislative committee, is a Virginian and a Democrat, and we thank you, sir.

Mr. SLAYMAN. How many members do you have in your organization, Mrs. Bussey?

Mrs. BUSSEY. Oh, about 150.

Mr. SLAYMAN. How old an organization is it? I mean how long has it been in existence?

Mrs. BUSSEY. The organization was organized to work for women suffrage. You will have to count it up.

Mr. SLAYMAN. Mrs. Renfro, have you a statement to read?

STATEMENT OF MRS. SUE RENFRO, ORGANIZED WOMEN VOTERS OF ARLINGTON COUNTY, VA.

Mrs. RENFRO. First, Mrs. Bussey has been kind enough to introduce me, but I think it would be appropriate, following her remarks, to inform you just why we appear before you today.

The Organized Women Voters, as she told you, is a bipartisan organization of women coming from every State—I mean many States of the Union. Its constitution and bylaws state specifically that it can consider only such matters as concern specifically the welfare of Arlington County.

When the legislative committee of the organization under its chairman, Mrs. Beluah Goss, made its committee report with the accompanying resolution which has been presented here today, the president called for a uanimous approval on the part of the organization before any consideration be given to the subject matter. Though they are

Republicans and Democrats and Independents and all kinds of various political persuasion in the organization, there was not one objection raised to the consideration of the committee report and resolution. There was not one vote against the resolution and the committee report.

Mr. SLAYMAN. How many people did you have present?

Mrs. RENFRO. I would say there must have been about 70, 75, 80, somewhere in there. It was a usual monthly meeting, just the regular monthly meeting that comes up, if you know what I mean, a normal, average meeting, if I may make the record clear on that point.

Mrs. Ray Whitney the fellow member of mine from Pennsylvania belongs to one political party and I belong to another. She and I pound our beats at elections, each working for the party of her choice.

And I might add we both work very, very hard. She supports my right to speak and I support hers. Not for one moment do any of us believe that any officer or member of the Organized Women Voters, regardless of their political beliefs, would permit or sanction the muscling or the coercion of any other member.

We believe that is the way it should be. We believe that no member of this committee would say it should be otherwise.

But S. 83 says it should be otherwise. S. 83 empowers a Commission, which is to be appointed by the Executive, to "investigate allegations" of violations of civil rights and to study and collect information concerning "economic, social and legal developments."

Because whether you men know it or not, there are more friendships sometimes lost, strayed, or stolen by some lady happening to forget to invite the wife of a certain husband in somebody office to a party, that that is very important to us.

S. 83 empowers the Attorney General of the United States to bring action in the Federal courts in the name of the United States "but for the benefit of the real party in interest."

In analysis of the above, it is predicted that we will quickly learn in these United States if S. 83 becomes law.

1. That while freedom of expression is guaranteed by the Constitution, it will not necessarily be safe to exercise the freedom.

2. It will be more expedient either to keep our mouths shut or to falsify our reasons for doing certain things or for not doing those things which, prior to the passage of such a bill, we would have been free to do or not to do as we chose.

3. That the possibilities of coercion will stretch unlimited because even though cleared of an "allegation", we will find that our families will be penalized by the expense of a defense.

4. Every businessman statesman, and even every lowly precinct politican or worker will be forever faced with the possibility that a refusal to hire any person, or to include such person in an invitation to a social or political function or meeting might result in "written allegations", investigation and/or lawsuits brought in the Federal courts in the name of the United States "but for the benefit of the real party in interest."

5. The welfare of our family unit and the preservation of its income will be guaranteed not by the exercise of good judgement but by the necessity of "playing the safe end" in order that once limited resource need not be pitted against the overpowering might of the executive branch.

6. That the passage of this legislation will result in the defeat of the statesman-politician by the demagogue, for it will pit the appeal of logic against the appeal of false issues, prejudice and newspaper headlines.

7. That any person, organization, or political subdivision subject to investigation because of "allegations" will be required to pay both the cost incurred by the inquisitors and the cost of the defense, thereby causing the taxpayer to pay for the prosecution in tax and for his defense in fees.

Gentlemen, will not Senate bill 83 permit discrimination against all? Will it remove the evil of discrimination? Or—will it spread discrimination?

If the argument that the rights of a minority have been violated is accepted by the Congress, should not the Congress likewise accept the argument that the solution should not be the violation of the rights of all?

Mr. Chairman and members of the subcommittee, the Organized Women Voters of Arlington County have no way of knowing the thinking of this committee or the type of bill the committee will draft.

But on behalf of the organization, I wish to thank you for allowing us to let you know our thinking as a grass roots organization. You have been most kind and exceedingly patient, and we do thank you for the trouble you went to to let us get here.

Mr. SLAYMAN. Thank you for being here.

Mrs. Beulah Goss, the legislative chairman.

STATEMENT OF MRS. BEULAH GOSS, LEGISLATIVE CHAIRMAN, ORGANIZED WOMEN VOTERS OF ARLINGTON COUNTY, VA.

Mrs. GOSS. Mr. Chairman and members of the committee; being chairman of the legislative committee, I am privileged to bring all of these and read all of these.

Before I say anything, I should certainly like to thank the displaced person, whoever he was.

I am sure he must be a southerner and I never knew I could like like a DP so well.

I am to discuss delegation of authority by the Congress to the executive branch of our Government.

I am Beulah Goss, chairman of the legislative committee of Organized Women Voters. My purpose in appearing before you today in behalf of the Organized Women Voters is to oppose the delegation by the Congress of its duties and responsibilities to the executive branch.

Article 14, section 5, of the Constitution of the United States says specifically:

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

It seems so stupid to quote that again to you learned gentlemen who have heard it so many times.

If the Congress feels that an investigative body is required then the Congress should create its own joint committee which would operate under rules laid down by the Congress as has been done in the past rather than create a committee of appointees of the executive branch subject neither to the Congress nor to the will of the people.

It is the opinion of this organization that Congress has a direct responsibility to its constituents to retain the power granted in article 14, section 5; that any action to the contrary represents a breach of faith with the people who elect you.

If the Congress intends to surrender all of its powers to the executive branch, it would be my personal opinion (though not necessarily at this time the opinion of the Organized Women Voters) that we women at the grass roots might well take a vacation every 2 years and abolish both Houses of Congress.

It is obvious that the Government and the people are growing too far apart—we experience that in our own area—and that Government by the people and for the people will be a Utopia lost by the creation of this Civil Rights Commission.

I call your attention to S. 83, page 11, lines 16–21:

The Commission shall submit interim reports to the President at such times as either the Commission or the President shall deem desirable, and shall submit to the President a final and comprehensive report of its activities, finds, and recommendations not later than 2 years from the date of the enactment of this statute.

Why is the Congress, the elected representatives of the people, bypassed? It is not that the executive branch is not trusted. Rather that the collective wisdom of the 435 Members of the House of Representatives and the 96 Members of the Senate is to be trusted more.

Your attention is further directed to page 14, lines 21, 22 and page 15, lines 1–7:

Whenever any persons have engaged or are about to engage in any acts or practices which would give rise to a cause of action pursuant to paragraphs first, second, or third, the Attorney General may institute for the United States, or in the name of the United States but for the benefit of the real party in interest, a civil action or other proper proceeding for redress, or preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order.

Gentlemen, who will determine that your constituents are about to—

engage in any acts or practices which would give rise to a cause of action pursuant to paragraphs first, second, or third.

Mr. Chairman, I would like to express my own very personal opinion in answer to the question just posed: The creation of a Civil Rights Commission as proposed under S. 83 not only usurps the power of Congress but in fact sets up a "Little Gestapo" within the framework of the Office of the Attorney General.

That is my own personal opinion.

I would hate to leave here today with the thought that our appeal to you, our elected representatives, is in vain.

In closing, the Organized Women Voters petition you not to delegate the authority vested in you by the creation of a committee of appointees of the executive branch subject neither to the Congress nor the will of the people.

Thank you.

Again thanks to the "D. P."

Senator ERVIN. Mrs. Goss, as I understand it, your organization, the Organized Women Voters of Arlington County is a nonpartisan organization?

Mrs. GOSS. Yes, it it. I think this is the nearest, Mr. Chairman, that we have ever gotten anything like this before the body.

Senator ERVIN. As I understand it, anyone who is interested in public affairs is eligible to join?

Mrs. Goss. If she is a taxpayer and a resident of the county, even though she is a temporary resident. She must be a taxpayer.

Senator ERVIN. On behalf of the committee, I want to thank you and Mrs. Renfro, Mrs. Bussey, and Mrs. Whitney for coming before the committee and giving us the benefit of the views of your organization.

Mrs. Goss. We are indebted to you.

Senator ERVIN. You have pointed out, I think, some very serious defects in this proposed legislation. As I understand it, the position of your organization is this:

First, that you do not think that it is advisable to set up a commission of this kind at all.

Mrs. Goss. We oppose it completely.

Senator ERVIN. And, second, that you think the Congress itself is more capable of making a study, if the Congress thinks there is any legislation needed in this field.

And, third, you say that if Congress does set up a commission, you think that the commission should be empowered to investigate the civil rights of all of the citizens of the United States and not confine their investigation to 1 or 2 groups of citizens.

Mrs. Goss. I think we have made it very clear here in our feelings on this. We have a great deal of confidence up to now in our Congress.

I think the vote on the bill submitted, the vote taken will probably determine how much confidence we really have.

If there is a necessity for a commission, if the Congress feels there is a necessity, then set up a joint commission. Let it be responsible to you, the people that we elect and put into office.

And I would earnestly beseech you that we try to get together. There is a growing away. There is not an awareness, and I do not blame nor does the organization blame our representatives entirely.

Generally our representatives get busy, they forget the people at the grassroots, and we are too timid. Frankly, coming here today, I have never appeared before the Senate body and I was a little nervous, but after I looked you people over I decided, well, I have worked for people just like you at the precinct level and we are just friends.

But I do petition you very much, we would like to see this S. 83 defeated or any similar bill. But if you feel the necessity for an investigative commission, let it be kept within our family.

Senator ERVIN. Thank you very much.

Is Mrs. Buchholz here?

The committee will be glad to hear from you at this time.

You are the president of the Arlington County Women's Democratic Club?

Mrs. BUCHHOLZ. Yes, I am.

Senator ERVIN. The committee is delighted to have you present and will be glad to have you present your views at this time.

STATEMENT OF MRS. LEONE BUCHHOLZ, PRESIDENT, ARLINGTON COUNTY WOMEN'S DEMOCRATIC CLUB

Mrs. BUCHHOLZ. Mr. Chairman, members of the Subcommittee on Constitutional Rights, I am Mrs. Leone Buchholz, president of the Arlington County Women's Democratic Club.

The club appreciates the opportunity to present their views to this committee. Could the able statesmen who worked so strenuously to frame the treasured document, the Constitution of the United States, be present today to witness the attempt that is being made to scrap this noble piece of work which has been the Nation's guiding hand since 1787, they would, I am sure, speak out in strong protest against such action.

Does the so-called civil rights bill designated 83 provide any rights that are not laid down in the Constitution? No.

The amendments to the Constitution, known as the Bill of Rights, grant cherished privileges to all persons residing within the confines of its quarters.

Through this great masterpiece that our forefathers passed on to us, our Nation has grown and prospered. Through individual civil liberties, today its torch of freedom is a shining example to the world; every civil right that the citizens cherish is guaranteed in the Bill of Rights.

We could go down the line and name all of those freedoms and all of those rights that are laid down in the Constitution and the Bill of Rights. Since all of the freedoms and all the rights that have been enjoyed by citizens of this great country are included in the Bill of Rights, why waste time of the already overburdened Members of Congress?

Why bring more economic pressure upon the overburdened taxpayer of American with legislation that is unnecessary and constitutionally questionable?

Gentlemen of the subcommittee, make no mistake—S. 83 is on the one hand solely aimed at a particular section of the country. You know that and I know that.

On the other hand, it flagrantly ignores the women of America. The conditions in this one section of the country, which we admit does have many complex problems, were not created by the citizens of that section alone, but rather were created by circumstances aided by other sections as well as other parts of the world, and I refer to the year 1619 when a Dutch vessel brought the first load of slaves to Jamestown, Va.

After that, slave trade flourished, but it was certainly not the southern people. It was New England shipbuilders, it was some of the inhabitants of Africa themselves and the traders of the West Indies who indulged in slave trade and profited by it, which was to my mind a very wrong thing to do, but it was done and the people of that section did not bring it about.

But at least now they are receiving somewhat of the brunt for what somebody else has done. Though obviously aimed solely at a particular section of the country, this proposed legislation is far reaching. It is not confined to just one section, and please bear that in mind.

It is a threat to the civil rights of every American citizen, regardless of sex, race, creed or color, whether they live in the North, East,

South or West, and while I have mentioned sex, it is to be noted that Senator Goldwater has submitted an amendment deleting the word "sex."

The organization which I represent, and of which I am president, objects to the deletion of this word. We women and mothers, now members of this great organization which I represent—and let me say that it is the oldest political organization, women's organization in Arlington County. You have just heard from the oldest women's organization in the county that is bi-partisan, the Organized Women Voters.

Now, I represent the oldest women's political organization in Arlington County.

Senator ERVIN. Your organization is affiliated or is part of, in effect, the oldest political organization on earth.

Mrs. BUCHHOLZ. That is right.

Senator ERVIN. And it looks to a great Virginian, Thomas Jefferson, as its patron saint, and when Thomas Jefferson undertook to give the reasons why the Colonies should separate themselves from England and become independent, he cited as one of the reasons that Americans had been deprived of their right to trial by jury. One of these bills undertakes to deprive them of that same right at this time.

Mrs. BUCHHOLZ. It undertakes to abolish it.

Let me say that there are members of this organization today who worked and fought for women's suffrage until the women's suffrage amendment was adopted in the 19th amendment to the Constitution.

I could go into detail and tell you some of the things they did to get women's suffrage. Some of them rode in parades down Pennsylvania Avenue of this city working for women's suffrage.

In recent years they have worked to have the right to sit on juries. They went to Richmond, members of this organization went to Richmond time after time working and pleading for the right of women to sit on juries, and we do have that privilege.

Gentlemen, neither the Democratic Party nor the Republican Party can afford to pose such threats, and then campaign after for office, if they expect to get votes, because I will tell you the Democrats would go out and campaign against them.

All of us in the precincts know that in a nation as large as ours, made up of human beings with human nature being what it is, there will always be some injustice. We don't say that every section of the country is perfect. I don't say that my section is perfect, but there is none perfect.

The Bible tells us that there is none perfect. We might approach perfection but we are not perfect.

But are you going to destroy for us our Constitution and our Bill of Rights in an effort to correct these injustices or is the present law under the Constitution going to be enforced to correct these injustices?

Example: If there is a problem child in the home, are the parents going to destroy that child because it is a problem or are they going to attempt to correct the behavior of that child?

Let's take a look at the proposed Commission on Civil Rights, a commission that is proposed to be set up numbering six men, and they will be paid $50 a day plus $12 per diem when they are working.

This commission, with unlimited authority to delve into the affairs of any person, business, firm, group, agency and others under the guise of investigation, this commission armed with full and unlimited power of subpoena, citation for contempt and power of injunction, would be an absolute power unto itself answerable to no one.

What recourse would the accused have? None. The citizens would be deprived of this right. What would happen to our freedom if the commission decided that an editorial, speech or any act of any individual did not suit it, that person involved would be summoned from any part of the United States to defend himself against the charges. Such a commission would not in any way protect civil rights.

On the contrary, it would work just the opposite. The Arlington County Women's Democratic Club cannot believe that any Member of this Congress, of either the Democratic or Republican Parties, would vote to take away the inherent constitutional civil rights and privileges that citizens enjoy under the Constitution and the Bill of Rights.

This club, the Women's Democratic Club of Arlington County, is most desirous that constitutional relationship between Federal and State Government be maintained. If the State lost this meaning, our entire system of government loses its meaning.

What is the next step? A rise of centralized power. Then we are really treading on dangerous grounds. A fertile field for seeds of autocracies is produced. Such seeds can and will take roots and grow.

We hope, Mr. Chairman and committee, that you will consider favorably our argument against the passage of any legislation constituting such a commission that will endanger the very foundation of our Constitution and Bill of Rights.

I thank you for this privilege. We have been quite concerned about this bill since it was first brought to light. Our organization has discussed it. We have discussed it in committee, in our executive committee, and we are very much opposed to anything that will endanger our Constitution.

That is a sacred document that all good Americans treasure.

Thank you very much.

Senator ERVIN. I want to thank you on behalf of the committee for coming to give us the benefit of your views and those of your organization.

Mrs. BUCHHOLZ. Thank you.

Senator ERVIN. I feel if all the people of the United States were as well informed in respect to these bills as the organizations from Arlington County represented here this afternoon, that we wouldn't have to worry about this matter at all.

Mrs. BUCHHOLZ. It is a matter of self-preservation in Arlington. We have to keep informed.

Mr. SLAYMAN. Mr. Perez.

Senator ERVIN. Judge, we are delighted to have you present to give us the benefit of your views on these various so-called civil rights bills.

Mr. PEREZ. Thank you very much, Mr. Chairman.

Senator ERVIN. You have a prepared statement?

Mr. PEREZ. I have furnished my prepared statement to the committee's secretary.

Senator ERVIN. You may either read your statement or summarize your statement, or you may read it and give any additional observations you wish to.

STATEMENT OF LEANDER PEREZ, DISTRICT ATTORNEY, NEW ORLEANS, LA.

Mr. PEREZ. My name is Leander H. Perez. I am district attorney of the 25th Judicial District of the State of Louisiana, comprising the southernmost parishes of Plaquemines and Saint Bernard.

I have been in local government first as district judge from December of 1919 to December 1923, then district attorney ever since.

I am fundamentally a local government man and have never aspired to or would accept any State office. My purpose in appearing before the committee today and all of my activities in various ways is to help in any way I possibly can to preserve the right of State government, and incidentally, the right of local government by the people.

Mr. Chairman, I appreciate the opportunity to appear before your committee today to oppose the enactment of the so-called civil-rights bills which are a rehash of scores of other similar bills which have been introduced in the various Congresses since, and possibly before but principally since, about 1947 when a manifesto on civil rights was published by a Committee appointed by President Truman.

I should like to go into the history of that project and its procedure.

There was appointed Chairman of that Committee one of our industrial leaders, apparently as a shirt front, Mr. C. E. Wilson.

I think he was president of General Electric, maybe he still is. The other members of that committee were Sadie T. Alexander, James B. Carey, John S. Dickey, Morris L. Ernst, Rabbi Roland B. Giddelson, Dr. Frank P. Graham, Rev. Francis J. Haas, Charles Luckman, Francis P. Matthews, Franklin D. Roosevelt, Jr., Rev. Henry Knox Sherrell, Boris Shishkin, Mrs. M. E. Tillie, and Channing H. Tobias.

I checked at least seven of those names, Mr. Chairman, who were members of Communist-front or subversive organizations so declared by the House Un-American Activities Committee or the Attorney General.

And I would like the privilege of filing reports in connection with my statement, if you please.

Senator ERVIN. The committee will grant you that privilege.

Mr. PEREZ. Just as important as the complexion of the members of the Committee was its counsel. As the committee knows, the committee counsel is an important agency, cog in the wheel of the proceedings and reports of committees of Congress.

Mrs. Nancy F. Wechsler was the counsel for that Committee. She admitted—I am reading from a report made as a result of an investigation—she admitted that she, like her husband, James A. Wechsler, editor of the New York Post, formerly was a member of the Communist Party.

It is reported that Budenz said he . . d known Nancy Wechsler as a member of the party.

The appointment of that Committee possibly has escaped notice generally, or the origin of the Committee. Walter White, the late executive secretary of the National Association for the Advancement

of Colored People, in a release for publication on Thursday, September 20, 1951, wrote, and I quote.

> The President's Committee was a result of a meeting during the summer of 1943 when 43 known Communist national organizations met at the invitation of the National Association for the Advancement of Colored People in New York City to consider methods of rousing and making effective decent public opinion to counteract such barbarities as the quadruple lynchings in Walton County, Ga., the blinding of a Negro war veteran by the chief of police of Batesburg, S. C.

Whether there was any substance to those reports, I do not know. White then tells us that this conference named a committee which called on President Truman, and that this visit to Truman led to his naming of the Committee on Civil Rights.

So the NAACP initiated the appointment of the Committee appointed by President Truman which produced this report entitled "To Secure These Rights."

Mr. Chairman, the record of the NAACP, the matter which was placed in the Congressional Record not too long ago, I believe by a Representative from Georgia, would show the Communist-front and subversive connections of practically every officer, member of the board of directors and their principal representatives of various States.

By queer coincidence, if some of the high-sounding language as to the purpose of these so-called civil-rights bills were compared with the language in this report entitled "To Secure These Rights," you will see the similarity in language, and the origin of these so-called civil-rights bills.

Mr. Chairman, I read that Attorney General Brownell appeared before your committee and gave rather lengthy testimony. I haven't had the opportunity of reading his testimony, but I wonder whether Mr. Brownell, as the principal legal officer of the United States, discussed the legal background or the legality of these proposals contained in these various bills, including the one which I understand he sponsors principally, that is Senate 83.

I would like to go into the question of the legality and the legal background of the questions involved, because it is most fundamental, because one who is given to serious thinking, Mr. Chairman, and who realizes the implications of these treacherous bills feels as though the red flag is hanging over the Capitol today as a present menace threatening all the people of the United States and their liberties and freedoms and their rights preserved under the Constitution of the United States.

A consideration of this important matter involves a study of the origin of the State and Federal Governments. They include the original Colonial grants, the Declaration of Independence, the original treaty with the British Crown which settled the War of the Revolution, the record of the Constitutional Convention which wrote the United States Constitution and created the Federal Government, and gave to this Congress certain limited powers of legislation.

The early decisions of the United States Supreme Court interpreting vital provisions of the Constitution and a regular course of decisions which the text is to be applied to all similar cases and by which the Court has concluded because the Constitution, Mr. Chairman, is not only the same in words but it has the same meaning as long as it continues to exist in its present form, and it speaks with the same

meaning and intent with which it spoke when it came from the hands of its framers and was voted on and adopted by the people of the United States.

The first fundamental question involved is whether the Original States derive their rights from the United States as some contend, or whether the States were sovereign in their own rights and as sovereign states entered into compact called the Constitution which created the Federal Government.

Prior to the Declaration of Independence, the Original States were British colonies and the people of these colonies enjoyed whatever rights, property, liberty, and freedom as was ordained by authority of the British Crown.

The Declaration of Independence on July 4, 1776, changed that situation entirely. Then followed the War of the Revolution, which was victoriously ended in the treaty with the British Crown in 1783.

It is well to remember, Mr. Chairman, and gentlemen of the committee, that that treaty provided that his Britannic Majesty acknowledged the said United States, namely, New Hampshire, Massachusetts, Rhode Island and Providence Plantation and so forth, naming each and every one of the Original 13 States to be free, sovereign, and independent States, that he treats with them as such and for himself, his successors and his heirs relinquished all claims to the government, proprietary, and territorial juridiction of the same and every part thereof.

Each one of the Original States had the category of an independent nation.

Until they adopted the United States Constitution and gave up certain of their sovereign rights to the Federal Government, and reserved all others to the States and to the people, not specially delegated to the United States. Reference might be made to some of the early decisions.

I don't know whether Mr. Brownell referred to them. In one of these cases Chief Justice Marshall for a unanimous Court held, and that was in 1823:

> By the treaty which concluded the war of our Revolution, the powers of government, and the right to soil, which had previously been in Great Britain, passed definitely to these States.

The power of government is what is being tampered with here for the destruction of the Constitution, for the destruction of the States, and that brings to mind statement made by the Supreme Court at various times in various decisions, that if we are to maintain the indestructibility of the Union, we must preserve the indestructibility of the States.

And again in another case that came up from New Jersey in 1842, the United States Supreme Court held that when the revolution took place, the people of each State became themselves sovereign.

And the Court has held time and again that on the admission of new States under provision of the Constitution, on an equal footing with the Original States each new State succeeded to and became possessed with all of the powers of government and sovereignty retained by the Original States.

It might be well to think back to the time when George Washington delivered his Farewell Address, when he said regarding the Constitu-

tion, that if in the opinion of the people the distribution or modification of the constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the Constitution designates, but let there be no change by usurpation, for though this in one instance may be the instrument of good, it is the customary weapon by which free governments are destroyed.

The President must always greatly overbalance in permanent evil any partial or transient benefit which the use can at any time yield.

Senator ERVIN. If you will pardon an interruption at this point, the best thing that could happen to this country would be for each American citizen to memorize the statement which you have just quoted from the Farewell Address of George Washington.

Mr. PEREZ. Thank you, Mr. Chairman.

Senator ERVIN. And I think if some our judges had written Washington's warning upon the table of their minds and their hearts, a great deal of the turmoil and confusion which exists in this country today would have been avoided.

Mr. PEREZ. I have no doubt of that, sir; and I have read it in the record in the hope that the Members of the Congress who are sworn to uphold the Constitution will remember their solemn oath to their God to support and protect that Constitution and our constitutional form of government under the Constitution, because it is a matter of record that the United States Supreme Court has strayed away from the fundamentals of the Constitution, that judges of the United States Supreme Court have made it so plain that they believe that whatever the Supreme Court says the Constitution is, is, and there is no appeal from the Court Supreme.

And Congress is the only hope of the people to protect the Nation and the people and their liberties and freedom under the constitutional framework of our Government between the National Government, the State governments and the local governments.

And if Congress should fall by the wayside and become prey to the infiltration that has taken place, then God save the people. There is no other recourse.

We know that leftist groups, who have invaded our Government, who are placed in important positions of policymaking in the National Government, have exerted influence on the United Nations, have exerted influence on the United States Supreme Court.

In connection with that statement, I would like the privilege of filing a copy of the Jenner report, horrifying, showing the infiltration of Communists in high places of the Federal Government some years back.

That infiltration and the positions held by those either confessed Communists or proven Communists must have left their imprint and influenced the course of National Government to the left, far to the left, dangerously far to the left, because we find today that while willfully or unwittingly, the contents of these so-called civil rights bills carry out the purposes of the Communist cold war against the United States.

At this point let us ask ourselves what is the Communist cold war. Is it a cold war against the President? Is it a cold war against the State Department?

We have heard a lot of talk about the cold war against the United States. I tell you, Mr. Chairman and gentlemen of the committee,

the Communist cold war is a conspiracy against the people of the United States. The purpose of these bills would serve the Communist cause to bring about turmoil and strife and national disunity in this country and to weaken the national defense.

What is the Communist conspiracy with regard to our public educational system? What is the situation here in Washington as it has been exposed by a committee of the House of Representatives?

The cold war is an ideological war, production of the most powerful weapons of destruction, technological, which can only be brought about by the training of the youth to become our future scientists and engineers, and what is the prospect of a degraded, substituted system of public education under the manifesto issued by the United States Supreme Court on black Monday, May 1953, and implemented by the National Government here in Washington, retarding the education of our youth to the satisfaction of my north bloc votes, for the self-aggrandizement of a few selfish politicians who would destroy the country to attain their own selfish goals.

It is horrible to contemplate, most disappointing to realize. Yes, Russia may be outdistancing the United States in production of a new crop of scientists. We read about that, too. We don't know, but it is to be expected that Russia will not neglect the training of its future scientists to integrate.

Russia has no such problems. It's Russia's agents in this country who are forcing the problem upon us, to destroy our future national defense and make us helpless before the world Communist conspiracy.

Let the Members of Congress contemplate over that. I read in some of these bills that the Civil Rights Commissions would have the authority to investigate so-called civil rights extending to the right to vote, the right to own property, the right to do business, social rights.

Social rights, what is the purpose of that? Is that to have Congress pass laws prohibiting any discrimination against intermarriage of whites and blacks, yellows or whatever other color, for the mongrelization of the people of the United States? What would bring about the most certain destruction of the Nation?

Senator ERVIN. I might state that H. R. 2145, which was approved by the subcommittee of the House Judiciary Committee, contains a provision that the Commission shall study and collect information concerning—

Social * * * developments constituting denial of equal protection of the laws under the Constitution.

Mr. PEREZ. Yes; I read that provision in one of these bills. I can't give the number of it right off.

Senator ERVIN. It's in 83.

Mr. PEREZ. That is the so-called Brownell bill.

Senator ERVIN. And also in the unnumbered committee so-called omnibus bill.

Mr. PEREZ. That is the omnibus civil rights bill, the ominbus bill.

That omnibus bill is patterned after Senate bill 1725, that was introduced by McGrath in 1949. I appeared before the Senate Judiciary Committee and spoke to that committee for 3 hours and 15 minutes against that omnibus civil rights bill, and I submit authorities to which I will refer shortly, to show that the United States At-

torney General, in 1944 I believe it was, had rendered an opinion to the Labor Committee of Congress advising that such legislation was unconstitutional, and cited case after case dating back to 1883, the consolidated case under the title of Civil Rights case, when the United States Supreme Court held all civil legislation by Congress exceeded its legislative authority under the Constitution, and that type of legislation was reserved strictly and exclusively to the States. That is why I wonder at the outset whether Mr. Brownell had gone into the legal phase of these propositions that he is supporting here.

Senator ERVIN. I have some very decided opinions on that point which, I think, for the purposes of discretion, I had better withhold.

Mr. PEREZ. Yes, sir.

Mr. YOUNG. Mr. Perez, in the report of the Truman Commission there entitled "To Secure These Rights," you have as one phrase constitutionality of Federal sanctions against individual actions, the United Nations Charter 55 and 56 which places together *Missouri* v. *Holland*.

Mr. PEREZ. Yes; I recall that.

Mr. YOUNG. That first appeared in that volume there as a basis for constitutionality of lynching bills, FEPC bills in any area where you are trying to get at individual action by Federal sanctions.

It was carried in Congress here for over 10 years in the bills and reports as a basis of constitutionality. It has been dropped this year from all the bills.

I wonder if you would like to comment on that as a grounds of constitutionality of this type of legislation?

Mr. PEREZ. As I recall it, in this report entitled "To Secure These Rights" reference is made to that Missouri-Holland case and they express the hope that because the Court had gone that far, the Court might be prevailed upon eventually to hold any other type legislation by Congress, by reference to the United Nations Charter, as being constitutional.

However, they seem to be conscious of the fact that there was a section or an article in the United Nations Charter, I believe it is article 7, section 2, providing that none of the provisions of the United Nations Charter should be construed as in any maner interfering with the domestic rights of any of the member States.

Mr. YOUNG. You are acquainted with the argument, though, that your second provision there does not delimit 55 and 56, since there you mentioned specifically and the general reservation article that you just referred to only applies to those things not specifically limited to the charter.

That argument has been proposed by those who dealt with the making of the charter. Are you acquainted with that?

Mr. PEREZ. Yes, sir, but it is my recollection that Senator Vandenberg and Senator Connally did draft a reservation and that the United Nations Charter, as I recall it, was affirmed by the United States Senate with those reservations, which would give the reservation against any construction of the charter applying to any of our domestic relations or domestic rights which are reserved to the States as being affected by the United Nations Charter.

I think an inquiry might show that the Vandenberg-Connally reservations were adopted by the Senate.

Mr. YOUNG. Let me ask you one more question.

If this comes before the Supreme Court on, say, an FEPC bill or an antilynching bill, do you believe that the proponents of the legislation will present that in their briefs as a ground of constitutionality of any of these bills?

Will the proponents of the antilynching bills state as grounds for constitutionality of these bills the United Nations Charter?

Mr. PEREZ. Yes. Of course, the United Nations Charter can't be accepted as any part of our laws relating to the liberties and freedom or the rights of the American people, the domestic affairs of the American people or their individual relationships with each other or the rights reserved to the States, because of that reservation, as I said, which I believe is in article 7, section 2, and the Vandenberg-Connally reservation.

But the argument made by the proponents of the anti-lynching bill, as I understand it, is that it is within the authority of Congress to legislate under the 14th amendment.

Mr. YOUNG. That is correct. Their argument under the 14th amendment is that the action of the lynch mob, since law and order has broken down and a mob has taken over, that the mob becomes by some peculiar thought agents of the State, and as State agents they are amenable to process of the 14th amendment.

That is the argument. I might add while we are on it—

Mr. PEREZ. That, of course, is farfetched, and in some of the citations that I would like to submit to the committee, I think the courts have rejected such farfetched ideas or interpretations of the authority of Congress under the Constitution.

Mr. YOUNG. That's correct; they certainly have.

Mr. PEREZ. I referred to the decisions of the United States Supreme Court, and the only reason why I come back to that briefly is the dangerous trend in National Government, because we have three branches of our Government under the Constitution.

The judiciary has taken over a great deal of the authority of Congress in policy making and legislation and amending of the Constitution as well, the executive, which unfortunately is not applying the brakes as it might with its great influence, and the legislative, which is Congress, which is now being called upon by the leftists and the liberals to follow the same path as the judiciary to adopt foreign ideologies in our system of laws.

Then what is the objective of all of this leftist trend in our National Government that has been developing because of the political urge for votes to secure bloc votes. The price demanded by the organizations supposedly representing the Negro vote in this country, the NAACP, is social equality. We know that.

The Supreme Court has adopted the foreign ideological theory of social equality in its racial integration decision against our public schools, and the Supreme Court very plainly said we can't go back to the time when the 14th amendment was adopted. And what did it mean by that except "We are not bound by what the Constitution said. We cannot go back to the time when the 14th amendment was adopted or when Plessy-Ferguson was written because in those times people didn't have a knowledge of modern psychology such as we now have."

And where did the Court get its knowledge of modern psychology?

Senator ERVIN. Your statement carriers with it the fearful implication that the Constitution of the United States automatically amends iself every time a new book on psychology is written.

Mr. PEREZ. Yes; and especially a new book by such characters as Brammel and Frasier and Clerk, and the scores of the others associated with Gunnar Myrdal in the Carnegie Foundation project, which severely criticized the Constitution itself, and all of that was adopted by the United States Supreme Court when it said, "See Myrdal, 1944, in footnote 11." Some of the things Myrdal said was, the Constitution was a plot against the common people—typical Russian propaganda:

The Constitution is in many respects impractical and ill suited for modern conditions.

Is it just as ill suited for the ambitions of the Attorney General and the other politicos today. Is that why they want to destroy our constitutional setup?

The worship of the Constitution—

Myrdal went on to say—

also is a most flagrant violation of the American creed—

which Myrdal created in his bid for racial equality as the amalgamator of races.

Myrdal added, "American liberty was dangerous to equality," and the Supreme Court adopted that and wants a free people to swallow it.

Senator ERVIN. And adopted that in preference to the opinion of Chief Justice William Howard Taft, just to mention one decision.

Mr. PEREZ. Yes, sir.

Going back to some of our historic figures on the question of American liberty, Alexander Hamilton, speaking on the floor of the Constitutional Convention in Philadelphia, said:

Inequality will exist as long as liberty exists. It unavoidably results from that very limiting itself—

and every mind assented.

Where are our statesmen today, among those who are advocating the rape of the Constitution and the destruction of the reserve rights and liberties and freedom of the American people. I say to you, Mr. Chairman and gentlemen of this committee, as I said to the American Bar Association in my discussion of the question of interposition on the subject of equality, it is inequality that gives enlargement to intellect, energy, virtue, love, and wealth. Equality of intellect stabilizes mediocrity. And that is what is happening in our public-school system right here in Washington and will happen all over the country if the Communist conspiracy can weigh down and defeat the courage and the will of a free people.

Equality of wealth makes every man poor. Equality of energy renders all men sluggards. Equality of virtue suspends all men without the gates of heaven. Equality of love would stultify every manly passion, destroy every family, alter and mongrelize the races of men. That is the Communist cold-war objective. That is what the stooges of the Communist cold-war conspiracy could only gain if these nefarious bills ever became law.

In his work on civil liberty and self-government in 1880, page 334, Francis Lieber said:

Equality absolutely carried out leads to communism.

Mr. Chairman, I don't think I'll take the time of the committee to go into a lengthy analysis of all these various bills. 510 is a conglomeration of various other bills presented on the same subjects, and I have referred to them in my opening statement which I file with the committee.

But it might be well to observe herein connection with civil-rights investigation by the Attorney General's Office, of which Mr. Brownell, himself, had experience, I think the records furnished by Mr. Brownell's predecessor show that out of 8,000 civil-rights complaints received by that Office, only 12 cases were prosecuted, which included Hatch Act violations. That is quite a record, and it must have cost taxpayers hundreds of thousands of dollars.

Mr. Chairman, there is a little bill here, I think it is the shortest of the whole crop, S. 468 and S. 504, and it is title XI in Senate 510. It's only 3 or 4 lines. It reads:

To extend to uniformed members of the Armed Forces the same protection against bodily attack as is now granted to personel of the Coast Guard.

Now what is the implication of that bill? I don't recall having read that it has been discussed here. It may have been—I may have missed it——

Mr. SLAYMAN. That bill has passed the House, Judge.

Mr. PEREZ. It has passed the House?

Mr. SLAYMAN. A time or two.

Mr. PEREZ. Oh, yes. Well, the House sometimes, you know, passes bills——

Mr. SLAYMAN. At a previous session.

Senator ERVIN. Mr. Slayman says it passed the House at previous sessions; not this session.

Mr. PEREZ. I have observed the House. Sometimes they pass bills and some people vote for it; they are afraid not to because of North bloc votes, and they say, "Well, the Senate will kill it and this will never become law." They don't want to get themselves in trouble. They don't want to lose votes at home.

Mr. YOUNG. I might add, Judge, on that bill I discussed it with the Army the other day to find out whether it was considered a civil-rights bill up here, and knowing that it is, they would like to look it over again.

Mr. PEREZ. Do they consider it a civil-rights bill?

Mr. YOUNG. They were amazed to find out it was considered a civil-rights bill.

Mr. PEREZ. I think I can explain why it is one of the most damnable civil-rights bills, if you will pardon my expression, sir.

First, let's look back to both the Democratic and Republican National Conventions.

When they were urged by the NAACP and some of the far leftest members of the convention to include a plank in the platform to implement the Supreme Court manifesto for racial integration in the public schools, both major parties backed away from it and they used some double-talking language which might be construed that way.

I remember when McCormack was pushed, when Senator Lehman offered an amendment and he, Mr. McCormack, said, "Why the provision now in the platform is stronger than you are proposing, Senator." And I thought it was, too.

It actually was, but I will try to explain why it is considered a civil-rights bill. That very brief provision in these three bills would simply strike out of title 18, section 1101, section 1114 of the United States Criminal Code the word "officer or enlisted man of the Coast Guard" and insert in lieu thereof "member of the Army, Navy, Air Force, Marine Corps, Coast Guard"—the whole Armed Forces of the United States.

Now the reason why officers or enlisted men of the Coast Guard are given protection from civilian attacks or acts of physical violence is because the Coast Guard function, the Revenue Department, is law enforcement against smuggling and the like.

I recall—and I refer to it in my statement here but I could not retrieve some of the exhibits I found last year—I have copy of an opinion rendered by an Assistant Attorney General within the last couple of years, possibly last year, that the reason why the provision protecting officers and enlisted men of the Coast Guard was in that section of the Federal criminal law was because the Coast Guard was engaged in law enforcement, but that it should not apply to the balance of the Armed Forces.

Senator ERVIN. Specifically one of the main uses for the Coast Guard is to prevent smuggling.

Mr. PEREZ. Yes, sir, but the Assistant Attorney General pointed out it was not necessary to have that same provision apply to the other branches of the Armed Forces of the United States.

He was either naive or insensate of the hidden purposes of one of the civil rights bills because this would effectively place the entire Armed Forces of the United States in the same category as the Coast Guard, and could be used in law enforcement, I say.

Mr. SLAYMAN. Judge, just as a point of information, in the 84th Congress when a similar bill passed the House, it was supported by the Defense Department which did not even require that the men be in uniform, as I believe is required in the instant bill to which you are referring.

They pointed out that the statute, the basic statute, requires the person to be in the performance of his official duties. At the same time, there was a Department of Justice opinion that drew the line along law-enforcement officers and opposed extension to include these other people.

Mr. YOUNG. Mr. Slayman, may I call your attention to a report of the Department of Justice on that bill 5205.

The Justice Department is not too much in favor of that bill. Let me read what they say:

> Consider in this bill the possible effect this enactment would have upon the workload of the Federal courts and Federal prosecuting staffs, for it may well be anticipated that numerous minor skirmishes involving members of the Armed Forces would call for the exercise of Federal prosecutive measures.
>
> Whether or not the bill should be enacted constitutes a question of policy concerning which the Department of Justice prefers to make no comment whatsoever.

That is from the Department of Justice addressed to the House committee, to the Honorable Emanuel Celler, June 13, 1955.

Mr. SLAYMAN. That is neither opposition nor support.

Mr. YOUNG. For a civil rights bill for the Department of Justice to say they prefer not to comment on whether it should be enacted amounts to a negation, I believe.

Mr. PEREZ. I am not informed whether Mr. Celler's committee approved that bill finally or not—did it?

Mr. SLAYMAN. Yes, it passed the House.

Mr. PEREZ. I think if you would read that letter very closely, with the implications of the bill, you might see the fine Italian hand of the Attorney General's office. He would not want to come out openly advocating the enactment of a law that would put the entire Armed Forces of the United States in law enforcement, of course not. But he does say just enough there to give grounds or reasons for passing the bill at the same time.

Now if you will read the Attorney General's bill, S. 83, you will notice there too that he uses a little more finesse than is used in a similar bill, S. 500, because in S. 500 for instance the provision is very plainly written that the Federal Bureau of Investigation be increased as many numbers as necessary, but in S. 83, the Attorney General's bill, it is only provided that he may call on other branches of the Federal Government.

And of course if he gets enough appropriation, he can add on just as many FBI's as he wants to.

I say the Attorney General uses a little more finesse, that is all, sir.

Mr. YOUNG. Let me call one more point of this bill to your attention.

Although it purports to amend section 1114 of title 18 solely, if you go to section 1114 of title 18, you find that it incorporates by reference two other sections of title 18, 11 and 12, that is 11 (11) and 11 (12) with two sections give the bill a tremendous coverage on minor offenses throughout the country.

Mr. PEREZ. Yes, sir.

Mr. YOUNG. A tremendous coverage. It is a far-reaching bill although it masks as protection of murder for Armed Forces personnel.

Mr. PEREZ. Yes, sir. That is why that little apparently innocuous bill is so dangerous. I say it is one of the most dangerous, one of the most nefarious bills introduced here.

Senator ERVIN. It means that in every little assault, assault and battery, or affray where anybody in the uniform of the armed services is involved, if he makes the claim that he was about his duty, citizens of local communities could be dragged off to Federal court 50, 100, 200, or 250 miles from their homes, and then after they get there unless it is proved beyond a reasonable doubt that the man in uniform was about his duty, the Federal court would have to dismiss the prosecution.

It is in large measure a proposal to take over the police power of the States.

Mr. PEREZ. Oh, yes. In fact the whole purpose of it, the result of all of this so-called civil rights legislation would strip the States of their reserved rights of enacting laws and enforcing laws and criminal statutes for the protection of the rights of the individual, which is specifically reserved to the States and the people in the Constitution, as has been held by other Supreme Courts repeatedly, even until 1951 at least.

Mr. YOUNG. The serviceman involved has the right to seek Federal protection, the penalties for which are very severe, amounting to felonies.

Mr. PEREZ. Yes, sir.

Mr. YOUNG. The private person affected has to pursue his remedy at the State level, the penalties for which are probably misdemeanors.

Mr. PEREZ. Misdemeanors in case of assault and the like, surely.

Senator ERVIN. Judge, maybe you can give me an explanation for a thing I find queer. Why is it that so many people elected to the Senate or the House come to the conclusion when they get out of their own States and districts and get up to Washington that the people that elected them to come up here have not got sense enough to run their local affairs.

Mr. PEREZ. Mr. Chairman, pardon me, I have heard of such a thing as Potomac fever. I don't know just how it affects men when they get to Washington in official life.

Senator ERVIN. I am not a victim of Potomac fever. On the contrary, I claim the people of North Carolina who sent me here are very sensible people and better able to run their affairs than the folks in Washington.

Mr. PEREZ. That has been my attitude with my people locally. I have been with them for 36 or 37 years in official life.

I want to say that the report, the opinion rendered by the Deputy Attorney General, was by William P. Rogers and his letter is contained in report No. 1555 which accompanied House Resolution 5205 of the 84th Congress, so the opinion of the Attorney General's office will be found in that report.

Mr. YOUNG. I might also say in the same report that the Treasury Department says that they prefer not to comment on it. They have no interest in the bill.

Mr. SLAYMAN. Judge, I would not want to keep you much longer on this one point. This is the 11th day of our hearings and I am not positive in my recollection, but I think I recall that the Attorney General himself, the present occupant of the office, Mr. Brownell, expressed in his summary of these bills now before the Senate committee, no opposition to this bill, but preferred it not to be in the civil-rights package.

Mr. PEREZ. Naturally if it can be sneaked through without it being labeled civil rights then you put the entire Armed Forces of the United States to implement the manifesto for racial integration by the Supreme Court, contrary to the professed position taken by both major parties in their platforms.

That would save possibly some embarrassment until the unfortunate American people wake up some time in the future and find their homes invaded by a squad of military, whether they are of the Army or the Marines or some other branch of the armed services.

Mr. SLAYMAN. In the official performance of their duties.

Mr. PEREZ. Surely, which at least by implication would be taking in law enforcement if they are included in the same category as Coast Guard, along with the other sections of the revised statutes which is connected with that same service in law enforcement.

Mr. YOUNG. All the people in section 1114, title 18, that are presently covered by Federal law are people in the Government.

Mr. PEREZ. That includes marshals, immigration officers.

Mr. YOUNG. G-men, that is right.

Mr. PEREZ. Prosecuting attorneys and so forth.

Mr. YOUNG. Correct.

Mr. PEREZ. All those engaged in Federal law enforcement, and to put all of the Armed Forces in the same category necessarily would be accepted as putting all of the Armed Forces of the United States

in law enforcement, regardless of what anyone says about it to the contrary, for the purpose of taking it out of the category of civi rights.

Senator ERVIN. Just one more observation on that point. The bil under discussion makes the jurisdiction of the Federal court depenc upon a fact which the defendant would find it almost impossible to controvert. He would not know whether the man in service was sent out on orders, and it would be virtually impossible for him to dispute any kind of assertion that the man in service made in that respect.

Mr. PEREZ. Mr. Chairman, I think if you look at the practical side of the thing, as you know, the Army and the Navy maintain squads of police to check on the conduct, and activities of members of their organizations, because it is a well-known fact when these men are on leave, on shore leave, they go into barrooms, they imbibe too freely, they engage in personal combat sometimes with civilians, and of course the civilians then could very easily find themselves in serious trouble and face Federal prosecution.

Defending one's self in a criminal action is a luxury. It is very costly. The rank and file of people cannot afford it.

I see the hour is getting late and I would like to refer to some of the cases which I prepared in opposition to McGrath's omnibus civil rights bill in 1949.

That was Senate 1725. I think we can take it for granted that the whole purpose of this so-called civil-rights bill, the objective is directed against the people of the South.

We know that there is just as much concentrated racial differences, dispute, and I think a whole lot more racial strife and turmoil in northern and eastern cities, Chicago, Detroit, and Philadelphia, than in New Orleans, Atlanta, and other southern cities, Southern States.

But we know the objective is to persecute the people of the South, at least to make a show of it to attract the bloc votes.

If Congress seriously contemplates the enactment of such as has been presented by these so-called civil-rights bills, I think Congress of course should take a look at the Constitution, should take a look at the interpretations of the Constitution by the United States Supreme Court, at least from 1883 on down to 1951.

Now the Court has consistently held—there is no telling what this Court will hold of course, we have been disappointed, we have been surprised, but the Court has consistently held—that the 14th amendment prohibits any State from depriving a person of life, liberty, or property without due process of law, but this adds nothing 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 Court further held the 14th amendment prohibits a State from denying any person within its jurisdiction legal protection of the laws but this provision does not, any more than the one which precedes it, add anything to the rights which one citizen has under the Constitution against another.

Senator ERVIN. And those decisions all held that in order to be State action the parties acting had to be acting not necessarily rightly or wrongly, but they had to be acting within the scope of the authority given them by the State.

Mr. PEREZ. Yes, sir; either under State law or under color of authority of State law.

Now the motive for advocating this type of legislation, Mr. Chairman, in recent years can hardly be prompted by the bitterness resulting from a war between the States which prompted the enactment of similar so-called civil-rights legislation.

So I think we should look for the motive for these propositions now. Where do we find similar laws enacted under the guide of protecting the civil rights of the people as a disguise or alibi for depriving the people of their rights to liberty and freedom?

Recent history records the nationalization of all civil rights of individuals in other countries, with most horrible results.

The first evidence, the outstanding evidence of the enactment of such so-called civil-rights laws in modern time is found in Russia, where human slavery of men, women and children is a basic part of the Russian economy we understand.

It is reported that after the Civil War was won by the revolutionists in Russia, Stalin's Georgian State was the first to adopt the system of so-called civil-rights laws.

Joe Stalin was the administrator of those laws, and the enforcement of their provisions, which could not be complied with, gave him such absolute control over the people of his Georgian State that he rose in power and succeeded in overthrowing Trotsky, after which there occurred a series of purges, killings, and enslavements such as the world had never before seen.

We do not know but that Stalin may have adopted so-called civil-rights laws with the control of all of the people of the Georgian State because of what he learned from the Thaddeus Stevens laws applied against the South during Reconstruction history.

But be that as it may, the so-called civil-rights laws were reborn in Russia and have been used mercilessly in the communistic pattern to enslave the Russian people.

Let us see what the Russian Constitution provides, and I have a copy of the constitution here.

Article 123, Stalin's all-races law, the same as you will find in these so-called civil-rights bills, provides—

Equality of the rights of the citizens of the U. S. S. R. irrespective of nationality or race in all spheres of economic, government, cultural—

and I repeat cultural, social, the same as in Mr. Brownell's bill—

social, cultural, political and other public activities as an indefeasible law.

This is the law that Stalin used to make himself supreme dictator of Russia.

It gave him absolute power over all Russians. Yet we know what kind of equality and rights the Russians have. We will find the same type provision in Russia and satellite countries.

Take the Latvian Constitution, for instance. Article 95—

the equality of rights of the citizens of the Latvian S. S. R., regardless of the nationality and race, in all branches of the economic state, cultural and social-political life is an unalterable law.

Any direct or indirect restriction of rights whatsoever—

and these nefarious civil-rights bills come mighty near that because they say not only something you have done but if you intend or attempt to do them the Attorney General can clamp down on you.

The Yugoslavian Constitution has similar provisions.

Article 10:

> Any limitation of rights, or the granting of any concessions or privileges to citizens of the FPRY on the grounds of differences of nationality, race or religion, which contravene the constitutional principles of equal rights for all citizens and people and fraternity and unit of the peoples of the FPRY shall be punished under this law.

Here is another similarity:

> The penalty for offenses under articles 1 and 2 of this law should have grave consequences—

such as provided in these civil-rights bills.

If any of the alleged or proposed offenses should result in maiming or wounding or death, why then of course the consequences and the penalties are much more severe.

Something else I would like to point out. I have a little pamphlet here gotten out by Tito, I guess, the Constitution of the Federative Peoples Republic. It is a treatise on the subject, and in this article he is referring to his antidiscrimination laws of the Republic of Yugoslavia.

He says, and I quote:

> This law constitutes one of the weapons in the fight against the remnants of the old social and state order, a weapon in the struggle against the remnants of the old ideologies and inherited ideas which have remained in the heads of backward individuals and reactionary groups.

We hear a whole lot of reactionary here.

Now let me show you, Mr. Chairman, the Communist influence in the writing of President Truman's committee's report entitled "To Secure These Rights."

At page 6, see if you find similarity in the language. See if students of communism had anything to do with writing this project "to secure these rights."

At page 100:

> We cannot afford to delay action—

on these civil rights measures—

> until the most backward community has learned to prize civil liberty and has taken adequate steps to safeguard the rights of every one of its citizens.

Backward communities, the same as the Tito pamphlet referred to the weapon the government had under the antidiscrimination laws, civil-rights laws against "backward individuals."

I would say by coincidence they refer to the backward individuals there as the Ustashas and the Chetniks, and I remember during the war against Germany and Hitler the Chetniks were the bravest fighters Yugoslavia ever produced but because they were liberty-loving people, they were referred to as "backward individuals and reactionary," the same as the people of the South.

Again we find this astounding statement in this booklet entitled "To Secure These Rights" at page 6:

> Since it is the purpose of government in a democracy to regulate the activity of each man in the interests of all men—

that is the objective of this abominable set of proposed legislation to regulate the activity of each men the Communist way.

But if we observe the United States Constitution, the people have reserved to themselves for their own State legislatures the right to legislate against wrongs of one citizen against another.

Now it remains to be seen whether the United States Congress or a majority of the House and the Senate will say "Yes, the United States Supreme Court said on Black Monday we cannot turn the clock back to 1787 when Washington is President and Ben Franklin and James Madison and Alexander Hamilton and the other patriots and Founding Fathers wrote the Constitution. We cannot turn the clock back."

No, "We will enact legislation to rob the people of their rights, liberties and freedom. We can't go back to fundamentals.

"The Constitution means nothing to us. Our oath to God means nothing to us. We have been brainwashed," bordering on atheism, if you will.

A man in ordinary life who violates his oath in testimony even before this committee is subject to prosecution for perjury. What is a man in the Halls of Congress who takes an oath to support and defend the Constitution of the United States and knowingly and willfully votes for bills to destroy the Constitution.

He is in no different category.

Mr. Chairman, I could go on for hours.

I appreciate your indulgence. I don't believe my testimony, my statement, will affect the vote of a member of Congress because the people back home cannot hear, because very little trickles back to them, because the same leftist influences, the same communistic domination, as you will, has played its part in television and radio and in the press through commentators and columnists.

We know that. Our country is in a horrible situation, and if Congress does not save it, I close in saying not God save the King, God save the people of America.

Thank you, Mr. Chairman and gentlemen of the committee.

Senator ERVIN. I might state to you in this connection that sometimes one gets despondent about things like this because of the difficulty of getting the message to the people. I take some consolation out of the fact that the American Civil Liberties Union has advised my administrative assistant by telephone that it is very gravely concerned about the provisions of the bills relating to the use of the injunction. I also take some consolation from the fact that there was an interesting column in the New York Times of today by Mr. Arthur Krock about the argument between myself and Attorney General Brownell with respect to that same matter.

I will ask you, Judge, if in your judgment as a lawyer and as a student of American government the provisions of the Attorney General's bill, that is S. 83, authorizing the Attorney General at his election to bring equitable proceedings rather than legal, will not enable the Attorney General at his absolute and uncontrolled discretion to bypass every one of the constitutional safeguards erected by the Founding Fathers to protect American citizens from bureaucratic and judicial tyranny.

Mr. PEREZ. I say definitely so, Mr. Chairman, and I have no doubt but that that is the very purpose of it.

There has been enacted today in Clinton, Tenn., an example of that very situation where some 18 persons, including a lady and a teen-aged high school girl, I believe, were brought out handcuffed along the

streets and shown all over the Nation on television, held up to ridicule and scorn as public criminals, which they were not, because from my inquiry into the matter I have no doubt that it was a case of the rankest type of false arrest and false imprisonment.

But the very thing you bring out by your question is being introduced down there now. When the court realized that the defendants were entitled to a trial by a jury under existing law, undoubtedly Washington had the Federal attorney in Clinton ask for a delay, mind you, to have the United States made a party plaintiff so as to deprive the defendants of the right of trial by jury.

That indicates to you the purpose of the Department of Justice, to defeat the right of trial by jury to the American people as guaranteed in the Constitution.

I have a statement prepared on that which I have filed. I did not want to take too much of the time of the committee at this late hour, but I show in that statement how the labor people were powerful enough to have Congress protect the rights of labor people in any labor dispute, to the right of trial by jury by 1948 amendment to title 18 to sections 3692 of the Supreme Court decision upheld by passing the prior provision of some other labor statute.

But I say this definitely. There is no doubt in my mind but that Senate 83, the Brownell bill, and Senate 500 as well similar provisions in Senate 510 would effectively repeal the 1948 amendment to title 38 of section 3692 which preserves the right of jury trial in cases arising out of labor disputes, if they involve race, color, creed, or national origin, and you can hardly imagine of any case that does not involve the question of different race, different color.

Negroes have a variety of different colors. Creeds? There is quite a variety of creeds. And national origin? I think if we would look back in our own ancestry we would find several national origins in our grandfathers and great-grandfathers and grandmothers. That is the reason why Stalin became the dictator of Russia under that national origin trick that he put in the law.

I did not have a chance to get to the FEPC, but I would like to say this: Why did the so-called liberals go all out during the Democratic administration under Truman for the FEPC? What is the FEPC? It is parading under the false pretense that it is to protect the poor Negro in job opportunities. I say that any sensible person would reject that idea because the FEPC is nothing but an effort at political control by the National Government of all jobs in private industry, and if ever an FEPC law is enacted, the party in power can stay in power and we can abolish all thought of second parties or splinter parties or anything else, because with the power of so-called investigation, with the power of prosecution through contempt proceedings without jury trial, there would hardly be an employer in the United States who could comply with the FEPC law, proposed law, to employ all people indiscriminately of the same national origin, race, creed, proportionately.

And if he is ordered to do so and it is going to wreck his business and he does not do so, then he might as well be a citizen of the Georgian State.

That would spell the death knell of private industry in this country, political control of every job, 60 million plus, in private industry.

My God, on what doth these politicians feed?

They are bankrupting the people of the United States with taxes to maintain millions of jobs in the Federal Government.

Now they want to control all jobs in private industry through the FEPC under false pretense.

Senator ERVIN. The Attorney General's bill confers upon the temporary occupant of the Office of Attorney General alone the uncontrolled discretion to determine whether or not the new type of suits to be authorized by these amendments are to be permitted, and then it provides in effect that when the Attorney General determines to bring such a suit State administrative and other remedies become inoperative. I would like to ask you if you have ever seen a single human being that you would be willing to trust with such unbridled power?

Mr. PEREZ. Absolutely not, sir. Not only that: that same bill would give to the Attorney General's Office absolute control over the election machinery in every State.

I have here, and I would like to submit in connection with my testimony, a résumé of the laws of the 48 States with regard to voter qualifications, the qualifications of citizens in order to register.

If a man is a convicted felon he cannot register, and there are certain other qualifications, some educational, some questions of good moral character, question of good citizenship, question of adhering to the principles of republican form of government, loyalty oaths and what not in the various States of the Union under the reserve rights of the States to enact such legislation.

But if the Attorney General were given the unbridled authority to persecute election officials all over the country, if the Attorney General were given the unbridled authority and the absolute right to prosecute law-enforcement officials, such as they are asking for in S. 83, that would make him or any other Attorney General of the future—and those of the future I have no doubt would exercise it more mercilessly than the present one because he would not have the temerity to barge right out and exercise that unlimited authority and power.

People would rebel against it, but people can be gradually led into believing that they are helpless and hopeless, and what the future would hold under such an act nobody could tell.

Senator ERVIN. I will ask you if the debates in the Constitutional Convention of 1787 and the articles which appeared in the Federalist, and the provisions of our Constitution itself do not show that the drafters of our Constitution realized this to be an everlasting truth, namely, that no man or set of men are fit to be trusted with governmental power of an unlimited nature?

Mr. PEREZ. Absolutely, sir, and I would like to be able to refer to a statement made, I believe, by Thomas Jefferson on the question of granting unbridled power to any officer.

Here is how Jefferson phrased it:

> In questions of power then let no more be heard of confidence in man, but bind him down from mischief by the chains of the Constitution.

The present power-hungry demagogs would break those chains. They want unbridled power over a free, liberty-loving American people.

I say it is a disgrace of the ages.

Let us see what Director J. Edgar Hoover said—and I would like to file that in the record. I think it might be referred to:

Every officer and citizen interested in good law enforcement should be aware that we are occasionally confronted with proposals pointing toward a centralization of police powers in a State or Federal agency. I firmly believe that such proposals are both unnecessary and unwise. I have consistently opposed any suggestions for a national police force and I intend to similarly oppose any other plan under which the local peace officer and those whom he serves will be deprived of their right to fully supervise law enforcement in their own community.

And he points out in his letter somewhere, and this is a letter he wrote to all law-enforcement officials back in 1952:

Any plan pointing to the eventual centralization of police powers in either a State or Federal agency is no more than a dangerous expedient adopted to serve some narrow, temporary purpose.

Referring back to the framers of the Constitution, Mr. Chairman, it is a matter of record and remembered by few of us. The Constitution never would have been ratified by the necessary nine States unless there was a strong gentlemen's agreement that the Congress set up by that Constitution would promptly refer back to the people the amendments which were adopted, known as the Bill of Rights.

Amendment 9 reads:

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

Our Constitution is different from the Russian Constitution. The rights of the people under the Russian and the Latvian and the Yugoslavian, the Iron Curtain country constitutions, the rights of the people come from the Politburo. They are granted under the constitution supposedly the observance of which of course is most questionable.

But in this country the rights of the people preceded the adoption of the Constitution and they were not given up to the National Government.

The 10th amendment provides:

The powers not delegated to the United States by the Constitution are reserved to the States respectively or to the people.

The people and the States are synonymous. Well, it remains to be seen whether Congress or the majority of the Members of both Houses will be moved by political expediency from the left, whether the political conspiracy against the American people will provail.

Thank you, Mr. Chairman.

Senator ERVIN. Judge, we would like to thank you for coming here and making this presentation of your views. I presume that you would like to have your complete statements that were filed with the committee included in the record?

Mr. PEREZ. Yes, sir, if you please.

Senator ERVIN. That will be done.

(The documents referred to above are as follows:)

Mr. Chairman: My name is Leander H. Perez. I am District Attorney of the 25th Judicial District of Louisiana comprising the parishes of Plaquamines and St. Bernard.

I appreciate the opportunity to appear before your committee to oppose the enactment of the so-called civil rights bills now pending.

I have a copy of S. 510 which is a conglomoration or hodge podge of practically every so-called civil rights bill introduced in Congress in the past several years.

S. 510 under 11 titles contain practically the same provisions of the other pending bills on this subject.

Title I is virtually the same as S. 83 and S. 501; Title II as S. 428 and S. 502, Title III as S. Con. Res. 5; Title IV as S. 508; Title V as S. 500 and S. 427; Title VI as S. 509; Title VIII is a rehash of hundreds of other bills introduced in the past several sessions of Congress, commonly known as FEPC. Title IX is another perennial and the same as S. 429; Title X the same as S. 901. Title XI, I believe, is of more recent vintage and is the same as S. 468 and S. 504, which has for its obvious, but hidden, purpose the placing of the entire Armed Forces of the United States in law enforcement. When that is accomplished it will spell the death knell of all of the liberties and freedom of the American people and it will place the United States on a par with the U. S. S. R.

I presented statements to this committee against similar legislation pending before this committee last year. I recall the statement filed on June 26, 1956, by Congressman James C. Davis, of Georgia in opposition to these bills. His statement was a very good analytical presentation, with which I fully concur. I would like to submit a copy of Congressman Davis' statement in connection with my appearance.

I recall Attorney General Herbert Brownell did not seem to show enthusiasm for the cause represented by the 1956 crop of so-called civil rights bills. Apparently he knew they had no merit. He didn't appear excited over the possibility of hiring for his department some three or four hundred more lawyers. Perhaps past performance had something to do with his nonchalance.

Records furnished by Mr. Brownell's predecessor show that out of 8,000 civil rights complaints received by that office, only 12 cases were prosecuted, including Hatch Act violation.

Gentlemen, with such a record as that, I wouldn't dare go before the voters of my district and ask them to reelect me district attorney.

We don't know how many convictions were had out of these 12 victims. But even if generous tax payers were to assume there were 100 percent convictions, they wouldn't see the justification of hiring several hundred more lawyers.

Gentlemen, I have deep reverence for the founders of this country; I have profound admiration for the men who wrote the Declaration of Independence and for the authors of the Constitution. They wrote into our law the greatest document on civil rights that ever sprang from the minds of men. We call those civil rights laws the Bill of Rights. They consist of the first 10 amendments to the Constitution.

Amendments I to X are really a part of the Constitution. The prevailing feeling at the Convention of 1787 was that the new Government had no authority to interfere with the inalienable rights of individuals which already existed under English common law. It was also felt that the proposed Constitution was not sufficiently clear in its reservations to the States of all power not specifically delegated to the National Government. Hence, the 10th amendment actually became a part of the Constitution, even before that document was ratified by the various States.

Many States felt it necessary that definite provision should be included in the Constitution which specifically made safe the rights of individuals. For this reason, many of the States ratified the Constitution with reservations that a Bill of Rights be added by the amending process when the new Government was established.

Twelve amendments were proposed. Ten of them were ratified.

The liberties guaranteed by the Bill of Rights included freedom of religion, peech, and press; the right of petition; liberty to assemble peaceably; the right bear arms; protection against the quartering of troops; the right to a jury ial; immunity from unreasonable search and seizure, self-incrimination, and ouble jeopardy, cruel and unusual punishment and excessive bail.

But the most important pronouncement in the Bill of Rights was:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the Sates respectively, or to the people."

No one can deny that this Nation came into being because of the uniting of ee, sovereign, and independent States. To refresh your memories, permit me read the first sentence of the treaty of peace after the Revolutionary War. he contracting parties to this treaty of peace were His Britannic Majesty on ie side and 13 Colonies on the other. I read that first sentence:

"His Britannic Majesty acknowledges the said United States, viz., New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, outh Carolina and Georgia."

This historic background shows conclusively what was meant and what was intended by the 10th amendment, although the clear, concise language of that important sentence permits of no erroneous interpretation.

Gentlemen, there is the barrier that prevents the Socialists, the Communists and their fronts and fellow travelers from completely undermining the basic fundamentals of our governmental structure. If that barrier is not removed or destroyed those groups may as well go out of business. Until reserved state sovereignty and the right of the people to local self government are destroyed, those groups can never accomplish their purpose.

I have said that the greates civil-rights laws ever written are embraced within the Bill of Rights.

Now, let us compare. No, we can't compare—there is no comparison! But let us contrast the intents and purposes of those great men who authorized the Bill of Rights and the citizens of the Original Thirteen States who ratified them, with the intents and purposes of the perennial sponsors of a score of civil rights bills, such as these new pending.

The first nine sections of the Bill of Rights built a wall of protection around the individual, and believing that protection could best be maintained by State and local government, the people of those Thirteen United Colonies ratified 10 of the 12 proposed amendments, the last, the sustaining and the most important of them all, being the 10th amendment.

These civil rights laws, better known as the Bill of Rights, did not reduce or minimize the functions of the States and their local government, but clearly reserved to the States, or to the people, all powers not specifically delegated to the United States by the Constitution.

What is the overall purpose of the civil-rights bills? Every one of them, every one of them of whatsoever nature, attempts to destroy State and local government; every one of them takes jurisdiction from the State courts and places more power in a centralized government.

Somewhere, gentlemen, there is a primal cause for this sudden sinister attempt to destroy the effectiveness of State laws and deprive State courts of jurisdiction they have had for more than a century. Somewhat a master mind is directing this cold war against the States and the people, with evil intent.

I call your attention to S. 510, Title XI, labeled "Protection of Members of Armed Forces," and companion bills S. 463 and S. 504.

"To extend to uniformed members of the Armed Forces the same protection against bodily attack as is now granted to personnel of the Coast Guard."

Law enforcement is one of the functions of the Coast Guard, and that is the reason for the application of U. S. Code, Title 18, Sections 1101 and 1114 to the Coast Guard.

The Army, Navy, Air Force, and Marine Corps perform no functions of law enforcement within the respective States.

Let us look at a glaring inconsistency in our present philosophy of Government. While every effort is being made to reduce and circumscribe the jurisdictional sphere of State courts, we are granting to foreign courts the right to charge, try, and punish our servicemen operating overseas.

A treaty, known as the "Status of Forces Agreement", page 7 ratified by the Senate, allows our soldiers, who are serving abroad, to be tried, and if found guilty, punished, according to the laws of the country in which the charge is made.

Do we have less confidence in and less respect for the courts of the respective States than in foreign laws and courts?

Is not the real purpose of most of these so-called civil-rights bills to have Congress legislate on strictly personal and social matters, the regulation of which is specifically reserved to the States and to the people by the 10th amendment? And would not such legislation nullify all State laws on the same subject matters, which would be prompted by the acts of Congress, according to recent decisions of the United States Supreme Court?

OMINOUS PURPOSE OF S. 510, TITLE XI, S. 468 AND S. 504

Attention must be called most emphatically to the ominous provisions of these bills, which would extend the provision of title 18, section 1114, to "members of the Army, Navy, Air Force and Marine Corps," in addition to the Coast Guard and other agencies of the Federal Government which exercise law enforcement. See the Report No. 1555 which accompanied H. R. 5205 of the 84th Congress, particularly Deputy Attorney General William P. Rogers' letter to the chairman of the House Judiciary Committee dated July 13, 1955, in which he advises that this statute "has included within its protection only persons

whose duties involve potential risks or hazards in connection with law enforcement. Coast Guard personnel appears to have been within the protection of the section by reason of their function in protecting the revenue under Section 52 of title 14 of the United States Code."

Then why would the proponents of these so-called civil-rights bills propose to include all the Armed Forces of the country in this law enforcement protective statute?

Measure that with the Communist-front dominated NAACP's active campaign to have presidential candidates declare themselves on the use of the Armed Forces of the country to implement the United States Supreme Court's racial integration decision of May 17, 1954, against the people of the South, and you have the diabolical scheme back of these two measures. A study of the Communist-front dominated NAACP will reveal their willingness to sponsor such legislation, to bring disaster to our country in the Communist cause.

It should be recalled that both the Republican and Democratic Parties studiously avoided any platform pledge to employ force to implement the Court's racial integration edict. Then why this insidious, treacherous threat to the peace of the country? The use of the Nation's Armed Forces in law enforcement, as proposed here, can only mean the proposed use of military force against citizens of this country to enforce these Communistic so-called civil-rights laws and the Supreme Court's racial integration manifesto.

Since the founding of this country each State has exercised the unquestioned authority to enact laws for the punishment of manslaughter or murder, assault, etc.

Under these bills, if any person should cause death or maiming, or attempted acts of violence, whether resulting in death or injury, the State in which the crime was committed would be denied the right to enforce its own laws. The Bill of Rights guarantees that a person shall not twice be put in jeopardy. Not only that, the Federal courts now hold if Congress enacts on any subject it preempts that subject, and annuls all State laws on the same subject.

The proposed law further provides that any person violating its provisions shall be subject to suit by the party injured, or by his estate, in an action at law, for damages, in the Federal courts.

There again we find that the States are to be pushed aside and their courts stripped of jurisdiction in civil cases.

If Senate Bill 508 or S. 510 Title IV were to become law, any State law enforcement officer would be in jeopardy. Any judge, prosecuting attorney, any police officer or sheriff, or any juror, would be subject to prosecution and heavy criminal penalties if he had participated in a case wherein one person received a heavier penalty than some other person of a different color or a different creed, or if a conviction were reversed on appeal, whether properly or not, for the assigned reason that the defendant was denied due process of law.

Under such a law no sane man would aspire to be a judge or a prosecuting attorney or State law enforcement officer, nor would intelligent, understanding citizens accept jury duty for fear he might be called upon to decide the guilt or innocence of an alien who might drag said juror into a distant United States district court to answer a suit for damages.

No man or woman would take an oath to tell the truth, the whole truth and nothing but the truth for fear he'd be testifying against a person whose religious faith was different from that of his own, thereby subjecting himself to be dragged into some distant United States court to fight a lawsuit.

S. 510, Title VI, and S. 509 pretends to strengthen the laws relating to convict labor, peonage, slavery, and involuntary servitude.

A person is mortified to learn that the 84th Congress is called upon to consider a bill that pertains to slavery, or one that purports to strengthen the laws on kidnapping. It is my opinion, however, that the words "kidnap" and "slavery" were infused into this proposed bill merely for the purpose of complementing the word "peonage."

There are customs in the South that grew up with our agricultural economy and in some States those customs have been sanctioned by statutory law. Mechanized farming is rapidly changing our economy. Example: The Southern planter is now finding that the cost of modern tools and implements is not nearly so much as the losses he formerly sustained by supplying food and clothing while a crop was being planted, cultivated and harvested.

Nowhere but in the South has a person been able to borrow on his potentiality as a laborer. With a mere promise of future labor he has, in the South, been able to obtain food and shelter for himself and family, while the other con-

tracting party—the planter—gambled his money on a future crop, governed largely by weather conditions and the honesty of his tenants.

A share-cropper who, in the late autumn of one year, moves himself and family to a plantation and borrows enough money to feed and clothe himself and family the ensuing winter and through the following crop year, with no collateral but a promise of his labor, is dealing with the most liberal loan system in the world, and for the planter the most hazardous.

A farm-tenant who accepts such loan and then violates the terms of it by slipping away under cover of darkness is considered in my country a very despicable character. Other tenants and share-croppers condemn him as bitterly as do the planters themselves. Customs and laws to protect the planter from such characters have grown up in the South as the only means by which the planter can continue to deal with farm-tenants and share-croppers.

The most abused person in America is the Southern planter. For a hundred years he has been maligned in song and story. The novels and so-called factual books about the South, the share-cropper is always the protagonist in contrast to the planter who is always the villian in the piece.

During the depression when briney tears flooded the Nation on behalf of the share-cropper, a Government agency set up a Commission to work out a proper contract between planter and farm-tenant. The result of the Commission's sweat and tears was an agreement that embraced the precise terms that had been used in the South for three-quarters of a century.

The Antidefamation League of B'nai B'rith, CIO unions, and ADA, the American Civil Liberties Union, the National Lawyers' Guild, and other leftist groups have heard about the laws and customs of the South and have labeled them peonage, without observing that this planter-loan system has enabled thousands of men and women to live on a much higher standard than you will find in many sections of your Nation's Capitol.

The law books are full of cases in which the courts have enforced specific performance. The customs of the South—those now called peonage—merely permit a contracting party to insist on the performance of labor already paid for.

The disturbing nature of such bills is that they sponsor Communist propaganda against United States imperialism and colonialism.

S. 510, Title X and S. 901, cited as Federal Anti-Poll Tax, would abrogate the laws of all States in which a poll tax must be paid each year to qualify for suffrage. They attempt to forbid elected officers of State and county to collect such a tax, although in so doing they would be fulfilling their duties as prescribed by State law.

Section 2 of Article I of the Constitution clearly leaves to the States the right to prescribe qualifications requisite for voters, which shall be the same as required by the State laws in the election of members to their State legislatures.

At the time the Constitution was written nearly all of the States required the payment of a poll tax as a prerequisite for electors, and most of those States required the ownership of real estate as an additional prerequisite.

In a speech before the Senate, on July 29, 1948, Senator Stennis said: "Instead of vesting the legislative bodies of the Government with the power to prescribe and control what shall be the qualifications of electors, the people through their organic law, have themselves prescribed those qualifications." (H. R. 29: Congressional Record 80th Congress, Second Session, page 9488.)

Certainly the Congress of the United States has no power to change the qualification of voters in the respective States. The power to impose qualifications on voters is vested by the constitutions of those respective States.

Although the proponents of the Federal Anti-Poll Tax Act back in 1948 did not mention the United Nations, this proposed Law, is part of the same general pattern which is designed to relieve the States of sovereignty and concentrate additional power in the central Government and in the United Nations.

Read the debates on the floor of the Senate when this proposed law was being discussed in 1948. Proponents of the bill wasted little time in an attempt to find justification in articles of the Constitution, but their oratory was confined to impressions we might or might not make on foreign countries. It was argued that by permitting some of the States to require payment of a poll tax as a requisite to qualify for suffrage, we'd be setting a horrible example for democracy.

Yes, this bill, like all the other civil rights bills now pending, is part of a pattern.

Speaking recently before the Inter-American Bar Association at Dallas, a former President of the United States warned that Russia's new strategy for the

promotion of worldwide communism was through socialists operating under the guise of liberals and progressives.

I wonder if these civil rights bills have anything to do with President Hoover's thinking. I feel sure he had them in mind.

The recent decisions of the United States Supreme Court and the proposed civil rights laws are bringing on a racial revolution which seeks to undermine our whole social structure.

This racial revolution is spearheaded by the NAACP.

What is the background of this organization that is causing so much trouble?

The NAACP was organized in 1909 by 5 persons, 4 of whom were white, including a Russian-trained revolutionist.

Another of these organizers was an American social worker who is said to have left her Fifth Avenue home in order to live in a Negro settlement.

The only Negro member of this group of organizers was W. E. B. DuBois, who has long Communist, Communist-front and subversive connections, according to the files of the Committee on Un-American Activities. DuBois is known as the honorary chairman of the NAACP.

On its board of directors, at the present time, are several widely known white persons, including Mrs. Eleanor Roosevelt, Senators Lehman and Morse; also Walter Reuther and Eric Johnston, motion-picture czar.

The NAACP has enormous funds at its command and powerful allies, including the Urban League, the Antidefamation League of B'nai B'rith, the National Council of Churches of Christ.

Wealthy organizations, some of which are tax exempt, are lending aid to the NAACP. The Carnegie Foundation supplied the money for Gunner Myrdal's study of racial problems in America. Myrdal is a Swedish Socialist. But his writings provided the psychological and sociological basis for the Supreme Court's school segregation decision.

Other allies who are aiding and abetting the NAACP in its conspiracy to integrate the races are Communists and Communist-front organizations who see in this plot a means of destroying the American Republic from within.

Two other powerful allies of the NAACP are Vice President Richard Nixon and Attorney General Herbert Brownell, Jr.

In Atlantic City, at the 46th annual convention of the NAACP, Vice President Nixon is quoted as saying: "The greatest progress since 1865 has been made toward the objectives to which this organization is dedicated * * * The most important of all is the integration of the public-school systems."

More recently, in a speech in New York before the Interfaith Movement, Inc., Attorney General Herbert Brownell denounced southern white leaders as "hatemongers who apply the whiplash of intolerance." He called organizations of the South who oppose his viewpoint an "infamous fraternity of professional bigots." He said they were "just as determined and just as destructive" as Communist and Fascists.

On a Sunday afternoon in June, Attorney General Brownell appeared on a nationally televised program called Face the Nation, in which he announced that the Justice Department is sponsoring these civil-rights bills.

From an insertion in the Congressional Record of February 27, 1956, we quote an interesting paragraph:

"It may be recalled that it was Mr. Herbert Brownell, former chairman of the Republican National Committee, who flew out to California for a secret conference with Governor Earl Warren in regard to appointment as Chief Justice of the Supreme Court. This affair had all the earmarks of a political deal in the light of the important role subsequently played by Warren in the unanimous Court decision declaring public-school segregation unconstitutional. When a citizen of California appeared before the Senate Judiciary Committee to voice opposition to Governor Warren's appointment, he was arrested and jailed on some minor charge which subsequently was dismissed in his home State, according to press reports."

The Supreme Court has not only scrapped the fundamental principles of the Bill of Rights of the Constitution, but it has usurped the legislative prerogatives of the Congress and the legislatures of the sovereign States. Furthermore, the Supreme Court has ruthlessly violated the ancient common-law doctrine of stare decisis, which means that a principle established by a previous Supreme Court shall not be set aside by the Court.

Recent decisions of the United States Supreme Court, followed by a score of civil-rights bills, are helping carry into effect the purposes of the Communists who announced through the Daily Worker on May 26, 1928, that:

"The Communist Party considers it as its historic duty to unite all workers regardless of their color against the common enemy, against the master class. The Negro race must understand that capitalism means social oppression and communism means social and racial equality."

In addition to the Anti-Poll-Tax Act, S. 510, title V and S. 500, all deal with suffrage, "to protect the right of political participation." It not only provides a penalty for "interfering with the right" of persons to vote, but it also provides a means of recovering damages through the auspices of the Attorney General.

This proposed law not only applies to general elections but to all primary and special elections held "by any State, Territory, district, county, city, parish, township, school district," and all municipalities "without any distinction." It covers interference or coercion based on color, creed, ancestry, etc.

One of these bills "to strengthen the civil-rights statutes, and for other purposes": This bill gives the Attorney General authority to bring suit for damages on behalf of the aggrieved person whether by his sanction or not.

Under this bill "no costs shall be assessed against the United States in any proceeding hereunder", win or lose.

"For the protection of civil rights, including the right to vote", action for damages may be brought against any person "about to engage in any acts or practices which would give rise to a cause of action."

I can assure you, gentlemen, that such a law would diminish voting far beyond the number of votes gained through an anti-poll-tax law. Bewildered by such laws, many people would be afraid to participate in elections, even in the selection of county and state officials.

S. 510, title V, and S. 500 to provide means of further securing and protecting the right to vote (to amend sec. 2004 of the Revised Statues): This law would apply to registrar of voters and to all officials and quasi-officials who have anything to do with elections. "No person, whether acting under color of law or otherwise" shall intimidate or coerce another in the matter of his choice.

This bill, like all the others, gives full jurisdiction to the United States district courts, "without regard to whether the party aggrieved shall have exhausted any administrative or other remedies that may be provided by law."

And now we come to a subject that was used as political bait until it became rancid with age. But as my fishing companion often says, "You can't ever tell when or what they'll bite."

If S. 510, title IX, and S. 429, anti-lynching bill, had become a law 5 years ago, the United States Attorney General's Office would have made even a poorer record than they did with those other civil-rights laws now on the statute books—12 out of 8,000. I don't believe the Attorney General could have chalked up one, single, solitary conviction during the past 5 years. And, of course, I am thinking of the South where, as the Attorney General says, we are "professional bigots (and) hatemongers who apply the whiplash of intolerance."

Except for the references made in these bills, I wouldn't waste your time with a discussion of it. But to me those references are fearful.

Such a law as proposed would give the United States courts jurisdiction over all cases in which two or more persons shall knowingly in concert (*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 or (*b*) exercise or attempt to exercise any power of correction or punishment over any person or persons in the custody of any governmental officer or employee. Any such action, or attempt at such action, by a lynch mob shall constitute lynching within the meaning of this act.

The true purport of this bill is contained in the first clause of the title: "to declare certain rights of all persons within the jurisdiction of the United States."

Continuing as we are toward statism, a subsequent amendment to such a law would require only substitution of the word "all" for the word "certain," making the clause read "to declare all rights of all persons within the jurisdiction of the United States."

Throughout the history of this country, the South has constantly and faithfully espoused the cause of States rights as provided by the Constitution.

This proposed law makes no honest effort to restrain lynchings and mob violence. It merely seeks to "protect all persons from mob violence because of race, creed, color, national origin, ancestry, language or religion."

In other words, a group of white Jews, white Catholics, or white Protestants could mob a score of persons of their own color and religion and this law, or proposed law, couldn't touch them.

The purpose of this law is to intimidate southerners in their renewed determination to maintain some modicum of States rights. The purpose of this law is to take from the States, all States within the Union, the right to execute its own laws or laws governing the jurisdiction of courts with reference to individuals, whether they be criminal laws or laws governing the jurisdiction of Courts with reference to property matters.

It is the evident intention of this proposed law to transfer state jurisdiction to the United States courts in a board field of criminal law.

Let us imagine a group of boys in my home perish in Louisiana getting together on Halloween night. They have planned a lot of fun and some damage to property. I can well imagine that group composed of Catholics, Jews, and Protestants, and I can well imagine they would be rather equally divided in "ancestry" of French, Italian, and English.

On this night of revelry I can well imagine this group of youngsters turning over garbage cans, pulling gates off hinges and causing damage to the extent of—maybe $10.

If I believed a couple of these youngsters were Jews, or Italians, or, if at least two of them were Protestants, I, a Catholic, to seek redress, would call upon the Attorney General of the United States to start, at once, an investigation "to determine", and I am quoting from the proposed law, "whether there has been any violation of this act."

In this proposed ridiculous law I would have two alternatives: (*a*) I could file suit against the United State Government, or, (*b*) the State of Louisiana, and any United States district court in the United States would have jurisdiction.

Unless you gentlemen from the North, East, and West realize that the concentration of Government, which means depriving all of the States of their constitutional rights, has definitely become a nationwide problem, even the disturbed and agitated South will not be able to stem the tide.

Out of a total of the bills and resolutions on civil rights now before the Senate, S. 510, title IV and S. 83, 501 and 505 seek to establish a Federal Commission on Civil Rights.

Some of these bills creating a Commission on Civil Rights in the executive branch of the Government grope blindly for something that would indicate need for such a law. In a sort of preamble they say:

"The Congress finds that the freedoms guaranteed by the Constitution of the United States have contributed, in large measure, to the rapid growth, productivity, and ingenuity, which characterizes our Nation."

That statement is followed, however, by the lament that the civil rights of some persons are being denied, abridged, or threatened. And that the executive and legislative branches of our Government must be accurately informed concerning the extent to which fundamental constitutional rights are abridged or denied.

In deep earnestness I say to you gentlemen that a Commission isn't needed to inform any openminded person that these civil rights bills constitute the most brazen attempt to abridge fundamental constitutional rights than anything else suggested in cold print.

S. 510, title VIII, seeks to establish a Federal Commission on Civil Rights and Privileges; to promote observance of the civil rights of all individuals; and to aid in eliminating discrimination in employment because of race, religion, color, national origin, or ancestry.

The Commission would be given power to subpena witnesses and pay their mileage fees. Its prescribed duties are rather evangelical. It would promote and encourage observance of, and respect for, the civil rights and privileges of all individuals making specific and detailed recommendations to the interested parties.

This committee would labor in the vineyard of the labor unions to bring about the removal of discrimination in regard to hire or tenure * * * or union membership, because of race, creed, or color.

It provides that an appropriation of $1 million be made for the Commission's use in making "grants to the States," who would set up local agencies to assist in spreading the gospel of civil rights and to help spend the money. Bribery?

My only comment on this bill is that it is as shameless as it is useless.

S. 510, title III would establish a bipartisan Commission on Civil Rights in the executive branch of the Government.

Some of the specified duties of the Commission would be 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 and to study means of improving respect for and enforcement of civil rights.

Undoubtedly, if all the pending civil rights bills should be enacted into law, they would cover all imaginable personal and private rights of the individual, and therefore, this Commission, through their horde of investigators, could pry into the personal rights and even domestic affairs of all the people of all the States in the Union.

As a consequence such legislation would preempt all State legislation regulating individual conduct to preserve peace and good order in the State.

This, of course, in spite of the fact that the United States Supreme Court in scores of cases since 1884 (*Barbier* v. *Connolly*, 113 U. S. 27) held that, neither the 14th amendment, as broad and comprehensive as it is, nor any other amendment to the Constitution, was designed to interfere with the power of the State, sometimes termed "Its police power," to prescribe regulations to promote the health, peace, morals, education, and good order of the people.

This suggested legislation is also violative of the rights of the States and of the people, as repeatedly held by the United States Supreme Court in the civil rights cases, decided in 1883 (109 U. S. 18), which held legislation by Congress upon the rights of the citizen to be repugnant to the 10th amendment of the Constitution.

These decisions were affirmed by the Supreme Court in recent years, as shown by *Shelly* v. *Kraemer* ((1948), 68 S. Ct. C p. 842); *U. S.* v. *Williams* ((1951), 71 S. Ct. C p. 586); *Collins* v. *Hardyman* ((1951), 71 S. Ct. C pp. 939-940), all holding that:

"Since the decision of this Court in the civil rights cases (1883, 109 U. S. 3), the principle has become firmly embedded in our constitutional law that the action inhibited by the 1st section of the 14th amendment is only such action as may fairly be said to be that of the States. That amendment erects no shield against merely private conduct, however discriminatory or wrongful."

S. 510, title II, S. 428, and S. 502 would create a Civil Rights Division of the Department of Justice concerned with all matters pertaining to preservation and enforcement of civil rights under federal law, and, particularly, the Federal Bureau of Investigation of the Department of Justice shall be increased to the extent necessary to carry effectively the duties of such Bureau with respect to the investigation of civil-right cases under applicable Federal law.

SHADES OF STALIN

The Congress of the United States, under its limited constitutional powers, is asked to take over the protection of all individual personal rights by setting up a Gestapo or security police that would put both Hitler and Stalin to shame.

Consider the civil-rights case of Amos Reese, a Negro of Georgia. The evidence shows that he was serving a term in the penitentiary of Georgia when he attacked a woman and committed rape. He had already been convicted of burglary and attempt to rape.

His conviction for rape was upheld by the Supreme Court of Georgia, but reversed by the United States Supreme Court on the ground that the lower court had not appointed a lawyer to defend the accused until after he'd been indicted by the grand jury.

When the Attorney General took over, he called upon the FBI to go into Georgia and investigate the administration of criminal laws of that State.

That was wanton disregard of the 10th amendment to the Constitution and a direct insult to the duly elected officials of that Sate.

But this proposed so-called civil-rights legislation would legalize the action of the Department of Justice in harassing State law-enforcement officials for the protection of the Negro murderer and rapist to encourage more Negro rapes of white women in the South—yes, and all over the Nation, too.

If Congress should enact these bills, directed at the destruction of personal liberty in this country, and to enforce a conformist pattern engineered by pro-Communist agitators, then Congress would be guilty of committing a grave act of Federal usurpation of ungranted constitutional power, which would add to the chaos and confusion in this country and compel States of the Union to exercise their sovereign right of interposition, for which there is much historic precedent and authority (Declaration of Constitutional Principles).

Gentlemen, for the first time in the history of nations has a government attempted to use the coercive power of government to force racial integration upon an unwilling people. That was done by the United States Supreme Court in its Black Monday decisions on May 17, 1954.

Most of this so-called civil-rights legislation is directed at implementing the unlawful Court decrees, or edicts, to subject the citizen and his personal and social activities to Federal control to satisfy the Communist cold war of racial integration—and eventual mongrelization. Such legislation would only compound infamy, and would be an unlawful usurpation of ungranted constitutional authority by the Congress. (See United States Supreme Court decisions from civil rights cases in 1883 to 1951.)

It is evident that this type legislation is being considered for political expediency—to mollify Communist-bent minority groups, principally the NAACP.

Members of Congress should take their bearings and realize the harm that is being done the country at large by outwardly exposing such measures, or force bills, with their baneful implications and results as witness reconstruction times after the War Between the States, and as has been reconstructed behind the Iron Curtain in Russia and in its satellite states.

The enactment of such so-called civil-rights laws to control every activity of the individual citizen would destroy the reserved police power of the States, with resultant all powerful Central Government, or statism—according to the basic philosophy of the Russian system of government.

These bills, if enacted by Congress, would most certainly destroy the liberty and freedom of the American people and substitute the Russian way of life—living in constant fear of a secret gestapo, or national police, which would intrude itself into every man's personal and social activities.

Instead of adopting the Russian scourge, please, let us hearken back to the words of the wise founders of both political parties.

Thomas Jefferson said of the Negroes and whites "Nature, habit, opinion have drawn indelible lines of distinction between them."

Abraham Lincoln said: " * * * there is a physical difference between the white and black races which I believe will forever forbid the two races living together on terms of social and political equality * * *"

And, Daniel Webster, a great statesman and a great American, expressed a great truth and an indisputable fact when he said: "If our buildings, our highways, our railroads should be wrecked, we could rebuild them; if our cities should be destroyed, out of the very ruins, we could erect newer and greater ones; even if our armed might would be crushed we could rear sons who would redeem power, but if the blood of our white race should become corrupted and mingled with the blood of Africa, then the present greatness of the United States of America would be destroyed and all hope for the future would be forever gone. The maintenance of the American civilization would be as impossible for a negroid America as would the redemption and restoration of the white man's blood which had been mixed with that of a Negro."

Respectfully submitted.

L. H. PEREZ,
District Attorney of Louisiana,
Balcour, Plaquemines Parish, La.

FEBRUARY 4, 1957.

MEMORANDUM ON RIGHT TO TRIAL BY JURY IN CONTEMPT CASES IN FEDERAL COURTS AND POSSIBLE EFFECT OF PROPOSED CIVIL RIGHTS LEGISLATION ON THIS JURY TRIAL RIGHT—REGARDING S. 83 AND S. 500

Section 3691 of title 18 of the United States Code reads as follows:

"§ 3961. Jury trial of criminal contempts.

"Whenever a contempt charged shall consist in willful disobedience of any lawful writ, process, order, rule, decree, or command of any district court of the United States by doing or omitting any act or thing in violation thereof, and the act or thing done or omitted also constitutes a criminal offense under any act of Congress, or under the laws of any State in which it was done or omitted, the accused, upon demand therefor, shall be entitled to trial by a jury, which shall conform as near as may be to the practice in other criminal cases.

"This section shall not apply to contempts committed in the presence of the court, or so near thereto as to obstruct the administration of justice, nor to contempts committed in disobedience of any lawful writ, process, order, rule, decree, or command entered in any suit or action brought or prosecuted in the name of, or on behalf of, the United States (June 25, 1948, c. 645, 62 Stat. 844)."

It will be noted that this right to jury trial in contempt proceedings of a criminal nature does not exist when the contempt proceeding originates from any lawful writ, etc., entered in any suit or action brought in the name of the United States. This means that this statutory right of a jury trial could be bypassed through bringing injunction proceedings in the name of the United States and obtaining an injunction therein, and then instituting criminal contempt proceedings for alleged violation of such an injunction in favor of the United States.

Accordingly, if Congress passes new civil-rights legislation, and includes therein a recognition of the right of the United States, through the Department of Justice, to institute proceedings for the enforcement and protection of civil rights and to obtain an injunction in those proceedings, there would apparently be no right to a jury trial for persons proceeded against by the United States on contempt charges for alleged violation of such an injunction. The civil-rights legislation proposed by the Department of Justice in the 1956 session of Congress included sections which would have authorized the Department of Justice to institute and prosecute actions for the enforcement and protection of civil rights (see 1 Race Relations Reporter, pp. 597–600, 760–763). An obvious purpose of this proposed legislation would have been to lay a foundation for bypassing in such cases the right to jury trial in criminal contempt proceedings.

Doubtless there will be an effort to include a similar provision in any civil-rights legislation brought before the present session of Congress.

The statutory provision for the right to jury trial in contempt proceedings in labor-dispute injunctions was originally section 11 of the Norris-LaGuardia Act of 1932. In the case of *United States* v. *United Mine Workers of America* (330 U. S. 258), the Supreme Court held that the defendants charged with contempt were not entitled to a jury trial under this statutory provision, on the theory that it then only guaranteed a jury trial in contempt cases arising under the Norris-LaGuardia Act. The Court as to this said (p. 298):

"* * * We need not treat these at length, for defendants, in this respect, urge only their right to a jury trial as provided in section 11 of the Norris-LaGuardia Act. But section 11 is not operative here, for it applies only to cases 'arising under this act' and we have already held that the restriction upon injunctions imposed by the act do not govern this case. The defendants, we think, were properly tried by the court without a jury."

The United Mine Workers case arose and was decided in 1947.

However, as a result evidently of labor-union representations to Congress, section 3692 of title 18 of the United States Code was rather promptly enacted by Congress in 1948 as follows:

"§ 3692. Jury trial for contempt in labor dispute cases

"In all cases of contempt arising under the laws of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the contempt shall have been committed.

"This section shall not apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice nor to the misbehavior, misconduct, or disobedience of any officer of the court in respect to the writs, orders, or process of the court (June 25, 1948, c. 645, 62 Stat. 844)."

The reviser's note to that section shows that this statutory provision for a jury trial in all contempt cases arising out of labor disputes was deliberately expended so as to eliminate the restriction which the Supreme Court had determined in the United Mine Workers case did not entitle the defendants therein to a jury trial. This note reads as follows:

"HISTORICAL AND REVISION NOTES

"REVISER'S NOTE.—Based on section 111 of Title 29, United States Code, 1940 edition, Labor (March 23, 1932. c. 90, § 11, 47 Stat. 72).

"The phrase 'or the District of Columbia arising under the laws of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute' was inserted and the reference to specific sections of the Norris-LaGuardia Act (sections 101–115 of title 29, U. S. C., 1940 edition) were eliminated. 80th Congress House Report No. 304."

It should be noted that under the above section of the United States Code enacted in 1948, all contempt proceedings in the Federal courts under injunctions in any case involving or growing out of a labor dispute, the right to jury

trial is guaranteed and no exception is made eliminating this right to jury trials in cases initiated by the United States.

If follows from this that, if the present Congress enacts civil-rights legislation restricted in any way the right to jury trial in the Federal courts in contempt proceedings which now exists, this would be a discrimination against citizens generally as to a fundamental civil right to jury trial which was extended and granted unrestrictedly to parties involved in contempt proceedings under injunctions obtained by the United States in labor cases by the 1948 extension of 3692 of title 18 of the United States Code.

In marked contrast now, the proposed so-called civil-rights legislation by Congress to authorize the Attorney General's office to obtain injunctions in suits brought in the name of the United States for the enforcement or protection of "civil rights," would deprive the defendants in such suits, and all other persons who may be charged with contempt for alleged violation of such injunctions of their constitutional civil rights to jury trial in criminal contempt proceedings.

There is no doubt in my mind but that S. 38 and S. 500, as well as similar provisions in S. 510, would effectively repeal the 1948 amendment to title 38, section 3692, which preserved the right of jury trial in any case arising out of labor disputes, involving race, color, creed, or national origin.

SUPPLEMENTAL STATEMENT BY DISTRICT ATTORNEY LEANDER H. PEREZ OF PLAQUEMINES PARISH, LA., TO SENATE JUDICIARY COMMITTEE REGARDING S. 900, S. 901, S. 902, S. 903, S. 904, S. 905, S. 906, S. 907, S. 1089, S. 3415, S. 3604, S. 3605, S. 3717, AND S. 3718, ALSO H. R. 5205

I submit and file in connection with my statement against the various so-called civil-rights bills, the subject of this hearing, a statement which I prepared and filed in July 1949, when I appeared against the omnibus civil-rights bill, S. 1725. The supporting memorandum of authorities, showing various United States Supreme Court decisions holding against the right of Congress to enact such legislation, which I filed in connection with this matter in 1949, is just as applicable today especially to S. 907. I added an addendum to this memorandum, quoting from more recent United States Supreme Court decisions against the right of Congress to enact such legislation as is proposed in the various so-called civil-rights bills which are directed against the individual citizen, instead of against the States under the 14th amendment.

STATEMENT BY ATTORNEY GENERAL OF LOUISIANA REGARDING OMNIBUS CIVIL RIGHTS BILL, S. 1725, S. 1729, AND S. 1734, THE F. E. P. C.

S. 1725 is the so-called "omnibus Civil Rights measure."

This bill provides for the creation of the Commission on Civil Rights with full power either by itself, or through any designated agency, governmental or private, including voluntary personnel, or through any of its employed agents, including a full-time staff, director, and such other personnel to gather information regarding social and legal development affecting the civil rights of individuals in this country and its territories.

The Commission, in these devious ways, would be authorized to appraise the activities of the Federal, State, and local governments and the activities of private individuals and groups to determine what activities adversely affect civil rights.

The Commission would be backed up by a new Civil Rights Division of the Department of Justice and by the Federal Bureau of Investigation to such increased numbers as might be considered necessary.

All Federal agencies are directed to cooperate with the Commission.

The Commission itself, or through its multitudinous agents and voluntary persons and organizations would have authority to issue subpoenas, order production of records and hold hearings and make up the record of its proceedings, and any failure to obey any such order would be punishable as a contempt thereof enforcible by the Federal courts without jury trial.

S. 1734 makes similar provisions, as above, and authorizes the appropriation of sufficient money out of the Treasury of the United States necessary to carry out the provisions of the act (bill).

S. 1725, M'GRATH OMNIBUS BILL—NOW S. 83, THE BROWNELL BILL

S. 1725 goes much further.

It follows largely the recommendations of the 1947 report of the President's Committee on Civil Rights, entitled "To secure these rights."

It provides for the creation of a Joint Committee on Civil Rights to study matters relating to civil rights secured by the Constitution and laws of the United States.

Title II of the bill makes provision for strengthening civil rights laws.

It extends the conspiracy to violate civil rights provision of the law to cover any inhabitant of any state, territory, or district.

It adds additional paragraphs to section 241, United States Code, title 18, directed expressly against any person who 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, for such purposes, and fixes the penalties for violation, and makes the offending person or persons subject to damages or preventive or declaratory or other relief.

S. 510, IV, P. 10 AND S. 508

It seeks to amend section 242 of title 18 of United States Code by providing that whoever, under color of any law, subjects or causes to be subjected any inhabitant of any State, etc., to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws of the United States, or to different punishments or penalties, because of such inhabitant being an alien, or by reason of color or race, shall be subject to heavy fine and imprisonment, and it adds a new section 242A, defining said rights, privileges, and immunities to include the right to be immune from fines or punishment or deprivations of property, without due process of law; to be immune from physical violence in the giving of testimony or confession of crime; to be free from illegal restraint; the right of protection of person and property without discrimination because of color, etc., and the right to vote as protected by Federal law.

S. 510, V AND S. 500

It seeks to amend section 594 to prohibit intimidation or coercion of any person for the purpose of interferring with his right to vote at any election.

S. 427

It seeks to amend section 2004, title 8, United States Code 31, guaranteeing all citizens of the United States otherwise eligible to be entitled to the right to qualify and o vote in any State or local election without distinction, directly or indirectly, based on race, color, religion, etc., any constitution or law of the State or Territory to the contrary notwithstanding.

It amends section 213 to add to the criminal penalties of section 211, provision for suit for damages or preventive or declaratory or other relief, and makes the same enforcible by the Attorney General.

It adds section 221 (a) to guarantee to all persons traveling in the United States full and equal enjoyment of accommodations and privileges of any public conveyance or common carrier, without discrimination or segregation based on race, color, religion, or national origin, and provides penalties for anyone acting in a private, public or official capacity for denying or attempting to deny such rights of indiscriminate or antisegregated public travel and fixes penalties against the common carriers for violations thereof and subjects them to civil damages or preventative or declaratory or other relief and grants the Federal courts jurisdiction regardless of the amount in controversy.

This type of proposed legislation by the Federal Congress is no innovation—it follows the pattern of the various bills enacted by Congress which set up a reign of terror and persecution against the people of the Southern States following the Civil War.

They are based upon the provisions of the 14th and 15th amendments to the United States Constitution—the validity of the adoption of which amendments is more than doubtful, because the adoption of said amendments were fraudulently imposed upon the people of the Southern States, while they were deprived of

their right of sufferage under the guise of similar so-called civil rights laws of the Federal Congress, backed up by military oppression and dictatorship.

The omnibus Civil Rights bill would reenact the same systematic persecution and oppression against the people of the South in an effort to destroy their biracial civilization through a Commission on Civil Rights backed up by a Bureau of Civil Rights in the Department of Justice, by unlimited increased numbers of FBI or Federal police, to the extent necessary to carry out the purposes of these bills, and also backed up by all Federal Departments, including the military, if need be.

Similar reconstruction measures, or so-called civil rights laws adopted by Congress for political purposes were held to be unconstitutional by the United States Supreme Court.

The Court held that the restraints of the 14th amendment ran against the States and not against individuals.

The Court held that the 14th amendment prohibits a State from depriving any person of life, liberty, or property, without due process of law; but this adds nothing to the rights of one citizen as against another. It simply furnishes an additional guarantee against any encroachment by the States upon the fundamental rights which belong to every citizen as a member of society.

The Court further held that the 14th amendment prohibited a State from denying to any person within it jurisdiction the equal protection of the laws, but this provision does not, any more than the one which precedes it, add anything to the rights which one citizen has under the Constitution against another.

The equality of the rights of citizens is a principle of Republicanism, and the duty of protecting its citizens in the enjoyment of this principle was originally assumed by the States; and it still remains there.

The Court further held that the only obligation resting upon the United States is to see that the States do not deny the right.

This the amendment guarantees, but no more, and the power of the National Government is limited to the enforcement of this guarantee.

The United States Supreme Court further definitely held that the rights and privileges under the 14th amendment are secured by way of prohibition under States laws and State proceedings, which affect those rights, but that its prohibitions have no application to the wrongful act of an individual, unsupported by the exercise of State authority. Such an act is only a private wrong or crime of that individual and may be vindicated in the State courts.

So the United States Supreme Court has repeatedly held that it is a violation of the Constitution of the United States for Congress to legislate with respect to the Civil Rights of individuals; and that such legislation is repugnant to the 10th 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.

That belongs to the exclusive jurisdiction of the States under their police power.

A memorandum of the decisions of the United States Supreme Court against the constitutionality of Federal so-called civil rights laws placing prohibitions and penalties against individual citizens for violations of civil rights of other persons is annexed.

The decisions of the United States Supreme Court in the civil rights cases of the Reconstruction Period marked the end of attempts by Congress to enforce civil rights under the 14th amendment until recent years.

The motive for advocating the enactment of so-called civil rights laws in recent years can hardly be prompted by the bitterness resulting from the Civil War. Those wounds have long since been healed.

The motive, therefore, for the political conspiracy to impose such legislation against the people of this country should be sought out and exposed. Where do we find similar laws enacted under the guise of protecting the civil rights of the people, as a disguise or alibi for depriving the people of their rights to liberty and freedom?

Recent history records the nationalization of all civil rights of individuals in other countries with most horrible results.

The first evidence of the enactment of such so-called civil rights laws in modern times is found in Russia, where human slavery of men, women, and children is a basic part of the Russian economy.

STALINISM

It is reported that after the civil war was won by the revolutionists in Russia, Stalin's Georgian State was the first to adopt a system of so-called civil rights laws. Joe Stalin was the administrator of these laws, and the enforcement of their provisions gave him such absolute control over the people of his Georgian State, that he rose in power and succeeded in overthrowing Trotsky, after which there occurred a series of purges, killings, and enslavements, such as the world had never before seen.

We do not know but that Stalin may have adopted his so-called civil rights laws for the control of all the people of his Georgian State, because he learned from reconstruction history of the ironclad, cruel dictatorship which similar so-called civil rights laws had imposed upon the people of the South during reconstruction times.

Be that as it may, the so-called civil rights laws were reborn in Russia and have been used mercilessly in the communistic pattern to enslave the Russian people.

RUSSIAN CONSTITUTION

Article 123 of the U. S. S. R. Constitution (Joe Stalin's all races law), provides that:

"Equality of rights of citizens of the U. S. S. R., irrespective of their nationality or race, in all spheres of economic, government, cultural, political, and other public activity is an indefeasible law."

This is the law which Joe Stalin used to make himself the supreme dictator of Russia, because it gave him absolute power over all Russians. Yet, we know what kind of equality and rights Russians have.

Further, the same type of so-called civil rights laws have been imposed upon the people of other countries brought under Russia's merciless rule.

LATVIAN CONSTITUTION

So we find in the constitution of the Latvian Soviet Socialist Republic imposed upon Latvia, on August 30, 1940, the following provision:

"Article 95. The equality of rights of the citizens of the Latvian S. S. R., regardless of their nationality and race, in all branches of economic, state, cultural and social-political life is an unalterable law.

"Any direct or indirect restriction of rights whatsoever, or, vice versa, direct or indirect establishment of privilege for citizens depending upon their racial or national affinity, as well as any promotion whatsoever of race of nationality, or the propagation of hatred and contempt—shall be punished by law."

YUGOSLAVIA CONSTITUTION

And, again, we find in the constitution of the Federative People's Republic of Yugoslavia, the following provisions:

"Article I. Any limitation of rights, or the granting of any concessions or privileges to citizens of the F. P. R. Y. on the grounds of difference of nationality, race or religion, which contravene the constitutional principles of equal rights for all citizens and people and fraternity and unity of the peoples of the F. P. R. Y., shall be punished under this law.

"Article II. Any agitation or propaganda, or the writing, printing, publication of distribution of any propaganda material inciting or calculated to provoke or incite national or racial hatred or discord is an offence against the principle of national equality of rights and shall be punished.

"Article III. The penalty for offences under Articles I and II of this law shall be deprivation of liberty for a period of from three months to five years. In addition, the Court may deprive offenders of political rights in accordance with the Law relating to forms of punishment.

"Article IV. If an offence under Articles I and II of this Law should have grave consequences, or if it should be committed under specially aggravating circumstances, or if an offence under Article II should cause mass disturbances, the penalty shall be deprivation of liberty with forced labour for a period of from two to fifteen years, partial or complete confiscation of property and loss of political rights. In the case of incitement to murder, the penalty shall be death.

"A repeated offence or an offence committed by a public officer in his official capacity shall be punished with special severity."

A special pamphlet was published by the Yugoslavia Government in 1947, in which the following commentary is made on their so-called Civil Rights Laws:

"As the leader of the liberation struggle of the peoples of Yugoslavia, Marshal Tito, has pointed out many times, the national liberation movement would not have succeeded, and indeed, would have been a deception, had it not represented a struggle for the most just solution of the national question, that is, for the establishment of the brotherhood and untiy of the peoples of Yugoslavia, based on the equality, sovereign rights, and national freedom of each people within the framework of the common federative state. This brotherhood and unity of the peoples of Yugoslavia, forged and sealed with blood, in the constitution of the Federative People's Republic of Yugoslavia, and in the constitutions of the People's Republics. This full equality of the peoples, ensured by the new people's authorities and the new social order, constitutes a firm foundation on which the equality of citizens rests without regard to national, racial or religious differences.

"In these circumstances, the importance and value of the law prohibiting incitement to national, racial, and religious hatred and discord, is clear. It is not founded merely on the constitutional provision prohibiting any act by which citizens are granted privileges or by which their rights are restricted on the basis of nationality, race, and religion, and prohibiting the preaching of national, racial, and religious hatred and discord. This law has its firm material basis in the whole social order of the new Federative People's Republic. This law constitutes one of the weapons in the fight against the remnants of the old social and state order, a weapon in the struggle against the remnants of the old ideologies and inherited ideas which have remained in the heads of backward individuals and reactionary groups (especially the remnants of the ustashas and chetniks).

"That is why this law is a powerful weapon in the hands of the state for the suppression of any individual who attempts to hinder the great deed of the development of the progressive fraternal community of our peoples on the principle of true national equality."

It is pointed out that when Russia became our ally against Germany and was put on lend-lease, Russia became popular in the United States, and friends of the Russian form of government infiltrated into employment in the Federal public service at all levels. The Communist Party was dissolved in 1944 and its leader came out in support of its candidate for President on the Democratic ticket. (The Communist Party has since been reorganized.)

Can there be any doubt but that those of the Russian faith who infiltrated in our Federal Government skillfully sponsored the idea of reviving the so-called civil rights Federal legislation in this country—the Joe Stalin way.

Is it not plain that the same brain and hand that dictated the Russian, the Latvian, and the Yugoslavian provisions for so-called civil rights also dictated a part of the report of the President's Committee on Civil Rights, when on page 6, language identical with that found in the Yugoslavia report is also found in the report of the President's Committee, as follows:

"It is the purpose of government in a democracy to regulate the activity of each man in the interest of all men."

and, again, on page 100:

"We cannot afford to delay action until the most backward community has learned to prize civil liberty and has taken adequate steps to safeguard the rights of every one of its citizens."

S. 510, VIII

The same principle, or lack of American principles, is found in S. 1728. This bill would create the Fair Employment Practice Commission, which would have the widest powers over the most intimate labor relationships throughout the whole United States. It could hold trials anywhere by its own commissioners or by agents of its own appointment. It could cite a noncomplying offender to the Federal courts for contempt. It would have the most extensive powers of investigation. Its agents could enter any place of business, put any employers and employees under oath and demand the production of books and papers, at any designated place of hearing anywhere in the United States or its territories.

The Commission's agents could initiate charges against any employer or labor union and the agent could then try such charges against the accused. The Com-

mission is given the power to petition Federal courts for the enforcement of such orders as its agents may render and the hearing before the court shall be had on the transcript of the record as made by the Commission or its agent.

The bill requires every employer and labor union to keep posted in conspicious places on its premises, a notice prepared by the Commission containing such information which the Commission deems appropriate to effectuate the purposes of the act, subject to penalty for violation of $500 for each offense.

There is no limit to the persecution which the Commission and its agents of opposite races might inflict upon the people of this country in general, and upon the South in particular, by such an apparently simple provision as that which is aimed primarily at breaking down segregation and social customs.

The FEPC is calculated to break down racial barriers by Federal legislation and is a stateist bill to put private enterprise throughout the country in the hands of an intolerable Federal bureaucracy in times of peace.

The omnibus civil rights and the FEPC bills would, in effect, resurrect the Freedmen's bureau of reconstruction days by inviting voluntary services from private associations.

The sponsors of these bills make claim that democracy in America would be made to work under threat of Federal imprisonment.

Such provisions are attempted in spite of the fact that Congress has no constitutional authority to enact such personal or social legislation.

Such so-called civil rights legislation is attempted to be forced through Congress with all the power of the present national administration, in spite of the fact that when similar legislation was pending in Congress in 1944, the then Attorney General of the United States courteously suggested to the labor committee before which said bills were pending, that they were unconstitutional and that the 14 amendment did not authorize Congress to pass legislation controlling civil rights of citizens of the States of the Union, and directed attention to the opinions of the Supreme Court in the civil rights cases in the decade following 1872.

However, the report of the President's Committee on Civil Rights broadly hints that it might be possible to see the present day Supreme Court reverse the earlier opinions of the Supreme Court on the question of civil rights of individuals.

There are movements today on behalf of organized minority groups to annul those decisions of the Supreme Court, which have stood for more than seven decades, and to revive those Federal laws.

If, however, the time ever comes when the Congress of the United States should reenact such so-called civil rights, or force bills, with their baneful implications and results as was witnessed during reconstruction times, and as again has been reconstructed behind the Iron Curtain in Russia and in its satellite states, and if the Supreme Court should be prevailed upon through political manipulations to declare that the Federal Government has jurisdiction over the civil rights of the individual citizens of every State of the Union, then this country will have abandoned the moorings of its constitutional heritage in favor of statism—the basic philosophy of the Russian system of government.

Before considering the proposition to embrace such Russian ideologies, would it not be well to stop and consider the aftermath which would follow the placing of Federal secret police in authority to regulate every American's activities, to destroy the liberty and freedom of the American people just as has happened in Russia?

To those who would willfully or unthinkingly tread the path via the so-called civil-rights laws to the Russian way of life, as against the American constitutional principles of individual liberty and freedom and self-government we recommend that they read the 1938 publication of the official history of the Communist Party, including the rise of Stalin and the Russian purges, which went hand in hand with the enslavement of the Russian people as a result of Joe Stalin's all races law.

God forbid that the same scourge should be visited upon the American people hereafter.

Therefore, we respectfully submit that these omnibus bills and other so-called civil-rights bills be unfavorably reported, and most certainly not enacted by the Congress of the United States

JULY 14, 1949.

MEMORANDUM OF AUTHORITIES

In opposition to Senate bill No. 510 and Senate bills 83, 501, 428, 502, 508, 500, 427, 509, 429, 901, 468, and 504, in the Senate of the United States entitled "To Provide Means of Further Securing and Protecting the Civil Rights of Persons Within the Jurisdiction of the United States."

The purpose of this memorandum is to show that there is a definite limitation on the power of Congress to enact legislation authorized by the 14th and 15th amendments.

The prohibition contained in the 14th amendment to the Constitution is against the State making or enforcing any law which shall abridge the privileges or immunities of citizens of the United States and is against the State depriving any person of life, liberty, or property without due process of law and is against the State denying to any person equal protection.

In section 5 of the amendment Congress is given the power to enforce the provisions of the article. Nowhere in the amendment is Congress authorized to pass legislation amounting to police regulation within the State, to carry into effect the guaranties of this article such as is being attempted by Congress in proposed Senate bill No. 1725.

The 15th amendment prohibits the State from denying or abridging the right of a citizen to vote because of race, color or previous condition of servitude. And section 2 authorizes Congress to enforce this article by appropriate legislation.

The Supreme Court of the United States has in no uncertain terms pronounced the theory that such legislature as it attempted here is contrary to the Constitution. In a group of cases consolidated and tried under the title of "The Civil Rights Cases" which included specifically the cases of *United States* v. *Stanley, United States* v. *Ryan, United States* v. *Nichols, United States* v. *Singleton, Robinson and wife* v. *Memphis & Charleston R. Co.* (109 U. S., page 18, October 15, 1883), and which involved sections 1 and 2 of the Civil Rights Act passed on March 1, 1875, which sections involved provides as follows:

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

"SEC. 2. That any person who shall violate the foregoing section by denying to any citizen, except for reasons by law applicable to citizens of every race and color, and regardless of any previous condition of servitude, the full enjoyment of any of the accommodations, advantages, facilities, or privileges in said section enumerated, or by aiding or inciting such denial, shall, for every such offense, forfeit and pay the sum of $500 to the person aggrieved thereby, to be recovered in an action of debt, with full costs; and shall, also, for every such offense, be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than $500 nor more than $1,000, or shall be imprisoned not less than 30 days nor more than one year; Provided, that all persons may elect to sue for the penalty aforesaid, or to proceed under their rights at common law and by state statutes; and having so elected to proceed in the one mode or the other, their right to proceed in the other jurisdiction shall be barred. But this provision shall not apply to criminal proceedings, either under this act or the criminal law of any state; And provided, further, that a judgment for the penalty in favor of the party aggrieved, or a judgment upon an indictment, shall be a bar to either prosecution respectively."

The following quoted portion of the case contains in substance the basis of the indictments:

"Two of the cases, those against Stanley and Nichols, are indictments for denying to persons of color the accommodations and privileges of an inn or hotel; two of them, those against Ryan and Singleton, are, one an information, the other an indictment, for denying to individuals the privileges and accommodations of a theater, the information against Ryan being for refusing a colored person a seat in the dress circle of Maguire's theater in San Francisco; and the indictment against Singleton being for denying to another person, whose color is not stated, the full enjoyment of the accommodations of the theater known as the Grand Opera House in New York, 'said denial not being made for any reasons by law applicable to citizens of every race and color, and regardless of any

previous condition of servitude.' The case of Robinson and wife against the Memphis & Charleston Railroad Co. was an action brought in the circuit court of the United States for the western district of Tennessee, to recover the penalty of $500 given by the second section of the act; and the gravamen was the refusal by the conductor of the railroad company to allow the wife to ride in the ladies' car, for the reason, as stated in one of the counts, that she was a person of African descent."

In holding section 1 and 2 of this civil rights statute unconstitutional the following language which I feel would apply equally to Senate bill No. 1725, was used. In discussing the power of Congress to enforce the prohibitions contained in the 14th amendment the Court, through Justice Bradley has this to say.

"It is State action of a particular character that is prohibited. Individual invasion of individual rights is not the subject matter of the amendment. It has a deeper and broader scope. It nullifies and makes void all State legislation, and State action of every kind, which impairs the privileges and immunities of citizens of the United States, or which injures them in life, liberty, or property without due process of law, or which denies to any of them the equal protection of the laws. It not only does this, but, in order that the national will, thus declared, may 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 law and State acts, and thus to render them effectually null, void, and innocuous. This is the legislative power conferred upon Congress, and this is the whole of it. It does not invest Congress with power to legislate upon subjects which are within the domain of State legislation; but to provide modes of relief against State legislation, or State action, of the kind referred to. It does not authorize Congress to create a code of municipal law for the regulation of private rights; but to provide modes of redress against the operation of State laws, and the action of State officers, executive or judicial, when these are subversive of the fundamental rights specified in the amendment. Positive rights and privileges are undoubtedly secured by the 14th 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); *Virginia* v. *Rives* (100 U. S. 313), and *Ex parte Virginia*, Id. 339" (109 U. S. Supreme Court Reporter, vols. 3–4 pps. 21, 22).

"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. It is not necessary for us to state, if we could, what legislation would be proper for Congress to adopt. It is sufficient for us to examine whether the law in question is of that character" (109 U. S., Supreme Court Reporter, vols. 3–4, p. 23).

"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 10th 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." (109 U. S., Supreme Cour Reporter, vols. 3-4, p. 24).

"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" (109 U. S. Supreme Court Reporter, vols. 3–4, pp. 25, 26).

"But where a subject is not submitted to the general legislative power of Congress, but is only submitted thereto for the purpose of rendering effective some prohibition against particular State legislation or State action in reference to that subject, the power given is limited by its object, and any legislation by Congress in the matter must necessarily be corrective in its character, adapted to counteract and redress the operation of such prohibited State laws or proceedings of State officers" (109 U. S. Supreme Court Reporter, vols. 3-4 p. 26).

In this case the Court also differentiated between the powers that Congress has under the 13th and 14th amendments and had to say as follows:

"The amendments are different, and the powers of Congress under them are different. What Congress has power to do under one, it may not have power to do under the other. Under the 13th amendment, it has only to do with slavery and its incidents. Under the 14th amendment, it has power to counteract and render nugatory all State laws and proceedings which have the effect to abridge any of the privileges or immunities of citizens of the United States; or to deprive them of life, liberty, or property without due process of law, or to deny to any of them the equal protection of the laws. Under the 13th amendment the legislation, so far as necessary or proper to eradicate all forms and incidents of slavery and involuntary servitude, may be direct and primary, operating upon the acts of individuals, whether sanctioned by State legislation or not; under the fourteenth, as we have already shown, it must necessarily be, and can only be, corrective in its character, addressed to counteract and afford relief against State regulations or proceedings" (109 U. S. Supreme Court Reporter, vols. 3–4, p. 30).

Justice Harlan wrote a very lengthy dissent in this case which was in effect that Congress could take steps by positive legislation to enforce the guaranties of the 14th and 15th amendments.

American Jurisprudence discusses at length under the title "Civil Rights," the problem with which we are concerned (vol. 10, p. 892, etc.). The more important provision is found in section 7 and is herein set out.

"The validity of the acts passed under the authority conferred by the 14th amendment must be supported upon different grounds from those relating to the 13th amendment, for by the 14th amendment it is State action that is prohibited. It prohibits State legislation and State action of every kind which impairs the privileges and immunities of citizens of the United States, 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; Congress is clothed with the power to correct, by appropriate legislation, the effects of prohibited State laws and State acts and, thus, to render them effectually null and void. Positive rights and privileges are undoubtedly secured by the 14th amendment, but they are secured by way of prohibition against State laws and State proceedings. The amendment does not deal with individual invasion of individual rights. Hence, there is no authority under the 14th amendment for an act of Congress designed to secure to all persons within the United States full and equal accommodations at inns, public conveyances, and places of amusement, without distinction because of race, color or previous condition of servitude; such an act is an encroachment upon the powers reserved to the States" (American Jurisprudence, 10, sec. 7, pp. 900–901).

United States v. *Cruikshank* (92 U. S. 589), in which section 6 of an act of May 31, 1870, 16 Statutes at Large 141, was concerned, the court in holding several indictments vague, but not passing on question of constitutionality had this to say regarding the 14th amendment.

"The 14th amendment prohibits a State from depriving any person of life, liberty, or property, without due process of law; but this adds nothing 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. As was said by Mr. Justice Johnson, in *Bk.* v. *Okley* (4 Wheat 244), it secures "The individual from the arbitrary exercise of the powers of government, unrestrained by the established principles of private rights and distributive justice." These counts in the indictment do not call for the exercise of any of the powers conferred by this provision in the amendment" (U. S. Supreme Court Reports 90–93, p. 592).

"The 14th amendment prohibits a State from denying to any person within its jurisdiction the equal protection of the laws; but this provision does not, any more than the one which precedes it and which we have just considered, add anything to the rights which one citizen has under the Constitution against another. The equality of the 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. That duty was originally assumed by the States; and it still remains there. The only obligation resting upon the United States is to see that the States do not deny the right. This the amendment guaranties, but no more. The power of the National Government is limited to the enforcement of this guaranty" (U. S. Supreme Court Reports 90–93, p. 592).

The statute involved in this case provided as follows:

"That if two or more persons shall band or conspire together, or go in disguise upon the public highway, or upon the premises of another, with intent to violate any provision of this Act, or to injure, oppress, threaten, or intimidate any citizen, with intent to prevent or hinder his free exercise and enjoyment of any right or privilege granted or secured to him by the Constitution or laws of the United States, or because of his having exercised the same, such persons shall be held guilty of felony, and, on conviction thereof, shall be fined or imprisoned, or both, at the discretion of the court—the fine not to exceed $5,000, and the imprisonment not to exceed 10 years; and shall, moreover, be thereafter ineligible to and disabled from holding any office or place of honor, profit, or trust created by the Constitution or laws of the United States (16 Stat. L. 141)" (U. S. Supreme Court Reports 90–93, p. 590).

Concerning the 15th amendment the following pertinent language was used by the Court.

"In *U. S.* v. *Reese*, just decided (ante, 563), we hold that the 15th amendment has invested the citizens of the United States with a new constitutional right, which is, exemption from discrimination in the exercise of the elective franchise on account of race, color, or previous condition of servitude. From this it appears that the right of suffrage is not a necessary attribute of national citizenship; but that exemption from discrimination in the exercise of that right on *account (*556 of race, etc., is. The right to vote in the States comes from the States; but the right of exemption from the prohibited discrimination comes from the United States. The first has not been granted or secured by the Constitution of the United States; but the last has been" (U. S. Supreme Court Reports 90–93, p. 592).

In the case of *United States* v. *Harris and others* (106 U. S. 629, vol. 1, Supreme Court Reporter 601), the constitutionality of section 5519 of the Revised Statutes, which was declared unconstitutional provided as follows:

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

Harris and several other were indicted for a violation of this provision of law. In reaching its decision the Court, citing from *U. S.* v. *Cruikshank* (supra) provided as follows:

"The purpose and effect of the two sections of the 14th amendment above quoted 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 or authorize Congress to perform "the duty that the guaranty itself supposes it to be the duty of the State to perform, and which it requires the State to perform'" (U. S. Supreme Court Reporter 106, vol. 1–2, p. 608).

"Section 5519 of the Revised Statutes is not limited to take effect only in case the State shall abridge the privileges or immunities of citizens of the United States, or deprive any person of life, liberty, or property without due process of law, or deny to any person the equal protection of the laws. It applies, no matter how well the State may have performed its duty. Under it private persons are liable to punishment for conspiring to deprive any one of the equal protection of the laws enacted by the State.

"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 14th 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 laws 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 States, or their administration, by the offices of the State, we are clear in the opinion that it is not warranted by any clause in the 14th amendment to the Constitution (U. S. Supreme Court Reporter 106, vol. 1–2, p. 609–610).

In its further discussion of Section 5519 of the Revised Statutes in light of the 14th amendment the Court further observed.

"It was never supposed that the section under consideration conferred on Congress the power to enact a law which would punish a private citizen for an invasion of the rights of his fellow citizens, conferred by the State of which they were both residents on all its citizens alike.

"We have, therefore, been unable to find any constitutional authority for the enactment of section 5519 of the Revised Statutes. The decisions of this court above referred to leave no constitutional ground for the act to stand on" (U. S. Supreme Court Reporter 106, vol. 1–2, p. 613).

In reaching its decision in the Harris case the Court also summed up that portion of the holding in the *Slaughterhouse* cases (16 Wall. 36):

"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 *Slaughterhouse* cases (16 Wall. 36), it was held by the majority of the court, speaking through Mr. Justice Miller, that the object of the second clause of the first section of the 14th 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 14th amendment, said that "if the States do not conform their laws to its requirements, then by the 5th section of the article of amendment Congress was authorized to enforce it by suitable legislation" only (U. S. Supreme Court Reporter 106, vol. 1–2, p. 608).

The court in *Strauder* v. *State of West Virginia* (100 U. S. 664), favorably passing upon an application by a colored man, indicted for murder to have his case transferred on the basis of section 641 of the revised statutes, declared as follows:

"When any civil suit or criminal prosecution is commenced in any State court, for any cause whatsoever, against any person who is denied or cannot enforce in the judcial tribunals of the State, or in the part of the State where such suit or prosecution is pending, any right secured to him by any law providing for the equal civil rights of citizens of the United States, such suit or prosecution may, upon the petition of such defendant, filed in said State court at any time before the trial or final hearing of the cause, stating the facts and verified by oath, be removed for trial into the next circuit court to be held in the district where it is pending, considered, and held not to be in conflict with the Federal Constitution."

Stated as follows regarding the 14th amendment:

"The 14th amendment makes no attempt to enumerate the rights it designed to protect. It speaks in general terms, and those are as comprehensive as

possible. Its language is prohibitory; but every prohibition implies the existence of rights and immunities, prominent among which is an immunity from inequality of legal protection, either for life, liberty, or property. Any State action that denies this immunity to a colored man is in conflict with the Constitution" (U. S. Supreme Court Reports 98–101, p. 666).

In *Ex Parte, Commonwealth of Virginia* (100 U. S. 667), involving the same section of the Revised Statutes (sec. 641, Supra) the Court made the following observation.

"The provisions of the 14th amendment of the Constitution we have quoted all have reference to state action exclusively, and not to any action of private individuals. It is the State which is prohibited from denying to any person within its jurisdiction the equal protection of the laws and, consequently, the statutes partially enumerating what civil rights colored men shall enjoy equally with white persons, founded as they are upon the amendment, are intended for protection against State infringement of those rights. Section 641 was also intended for their protection against State action, and against that alone" (U. S. Supreme Court Reports 98–101, p. 669).

Regarding the rights of Congress to enact legislation, pursuant to the 14th amendment and concerning the particular right statute involved, it was also observed by the Court in this case:

"The Civil Rights Act, to which reference is made in the section in question was only intended to secure to the colored race the same rights and privileges as are enjoyed by white persons; it was not designed to relieve them from those obstacles in the enjoyment of their rights to which all other persons are subject, and which grow out of popular prejudices and passions.

"The denial of rights or the inability to enforce them, to which the section refers, is, in my opinion, such as arises from legislative action of the State, as for example, an act excluding colored persons from being witnesses, making contracts, acquiring property, and the like. With respect to obstacles to the enjoyment of rights arising from other causes, persons of the colored race must take their chances of removing or providing against them with the rest of the community.

"This conclusion is strengthened by the provisions of the 14th Amendment to the Constitution. The original Civil Rights Act was passed, it is true, before the adoption of that amendment; but great doubt was expressed as to its validity, and to obtain authority for similar legislation, and thus obviate the objections which had been raised to its 1st section, was one of the objects of the amendment. After its adoption the Civil Rights Act was re-enacted, and upon the 1st section of that Amendment it rests. That section is directed against the State. Its language is that 'No States 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.' As the State, in the administration of its government, acts through its executive, legislative, and judicial departments, the inhibition applies to them. But the executive and judicial departments only construe and enforce the laws of the State; the inhibition, therefore, is, in effect, against passing and enforcing any laws which are designed to accomplish the ends forbidden. If an executive or judicial officer exercises power with which he is not invested by law, and does unauthorized acts, the State is not responsible for them. The action of the judicial officer in such a case, where the rights of a citizen under the laws of the United States are disregarded, may be reviewed and corrected or reversed by this court; it cannot be imputed to the State, so as to make it evidence that she, in her sovereign or legislative capacity, denies the rights invaded, or refuses to allow their enforcement. It is merely the ordinary case of an erroneous ruling of an inferior tribunal. Nor can the unauthorized action of an executive officer, impinging upon the rights of the citizen, be taken as evidence of her intention or policy so as to charge upon her a denial of such rights." (U. S. Supreme Court Reports 98–101, pp. 674–675.)

In another case entitled Ex Parte Commonwealth Virginia, a judge was charged with violating that section of 18 Statutes at Large 336 (act of March 1, 1875) which provides as follows:

"No citizen, possessing all other qualifications which are or may be prescribed by law, shall be disqualified from 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 or servitude; and any officer or other person, charged with any duty in the selection or summoning of jurors, who shall exclude or fail to summon any citizen, for

the cause aforesaid, shall, on conviction thereof, be deemed guilty of a misdemeanor and be fined not more than $5,000," examined, and held to be authorized by the 13th and 14th amendments of the Constitution, which Congress is given power to enforce by appropriate legislation." (U. S. Supreme Court Reports 98–101, p. 677.)

The effect of this decision was to enlarge the prohibition contained in the 14th amendment to extend to actions by State agencies, and public officials. In this connection the head notes of the case sum up clearly the holding.

"The inhibition contained in the 14th amendment means that no agency of the State, nor of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal protection of the laws. Whoever, 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. Otherwise the constitutional inhibition has no meaning and the State has clothed one of its agents with power to annul or evade it.

"The constitutional amendment was ordained for a purpose. It was to secure equal rights to all persons, and to insure to all persons the enjoyment of such rights. 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 the 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, and is fully authorized by the Constitution.

"The act of the defendant, in selecting jurors, was a ministerial, not a judicial act; and being charged with the performance of that duty, although he derived his authority from the State, he was bound, in the discharge of his duties, to obey the Federal Constitution and the laws passed in pursuance thereof." (U. S. Supreme Court Reports 98–101, page 677).

In this same connection *Shelley* v. *Supreme Court*, and *Shelley* v. *Kraemer* (68 Supreme Court 836) had before it the question of a court's enforcement of restrictions of sales of property to Negroes. In holding that the action of the State court in enforcing such covenants was the action of the State itself, the Court observed as follows:

"That the action of State courts and of judicial officers in their official capacities is to be regarded as action of the State within the meaning of the 14th amendment, is a proposition which has long been established by decisions of this Court. That principle was given expression in the earliest cases involving the construction of the terms of the 14th amendment."

Pursuing further the theory that Congress can only enact laws to enforce provisions of the 14th amendment and remembering that the prohibition contained in the 14th amendment only extends to action by the States and agents of the State and considering further that the bill in question undoubtedly protects rights of citizens violated by other private citizens, it is important to observe the following language used by the Court.

"Since the decision of this Court in the Civil Rights Cases, 1883 (109 U. S. 3, 3 Sup. Ct. 18, 27 L. ed. 835), the principle has become firmly embedded in our constitutional law that the action inhibited by the first section of the 14th amendment is only such action as may fairly be said to be that of the States. Tha amendment erects no shield against merely private conduct, however discriminatory or wrongful.

"We conclude, therefore, that the restrictive agreements standing alone cannot be regarded as a violation of any rights guaranteed to petitioners by the 14th amendment. So long as the purposes of those agreements are effectuated by voluntary adherence to their terms, it would appear clear that there has been no action by the State and the provisions of the Amendment have not been violated. *Cf. Corrigan* v. *Buckley*, supra." (68 Supreme Court Reporter, page 842.)

(This case contains a good summary of the important jurisprudence limiting the extent to which Congress can go in enacting legislation pursuant to the 14th amendment.)

In *Love* v. *Chandler* (124 F. 2d, p. 785), the Court again reiterated the following theory in discussing statutes enacted under the 14th amendment.

"The statutes were intended to provide for redress against State action and primarily that which discriminated against individuals within the jurisdiction of the United States. *Hague* v. *Committee for Industrial Organizations* (307 U. S. 496, 509–514, 59 Sup. Ct. 954, 83 L. ed. 1423); *Hodges* v. *United States* (203 U. S.

1, 14–20, 27 Sup. Ct. 6, 52 L. ed. 65) *Logan* v. *United States* (144 U. S. 263, 290, 291, 12 Sup. Ct. 617, 36 L. ed. 429). The statutes, while they granted protection to persons from conspiracies to deprive them of the rights secured by the Constitution and laws of the United States (*United States* v. *Mosley* 238 U. S. 383, 387, 388, 35 Sup. Ct. 904, 59 L. ed. 1355), did not have the effect of taking into Federal control the protection of private rights against invasion by individuals. *Hodges* v. *United States* (203 U. S. 1, 14–20, 27 Sup. Ct. 6, 51 L. ed. 65); *Logan* v. *United States* (144 U. S. 263, 282–293, 12 Sup. Ct. 617, 36 L. ed. 429.")

"The complaint states that, by appellees' acts, appellant 'has been denied the benefits and rights granted him under and by the * * *14th amendment to the Constitution of the United States.' The conclusion is erroneous, for the 14th amendment does not grant or secure any right to practice medicine or surgery in Arizona. Furthermore, rights secured by the 14th amendment are thereby secured against State action only. Appellant complains, not of State action, but of the acts of individuals-appellees. The complaint does not state that appellees are, or ever were, officers, agents, or employees of the State, or that they are, or ever were, empowered to act for and on behalf of the State, or that they have at any time so acted." (139 Reporter, 2d Series, p. 146, *Swank* v. *Patterson et al.*)

"(1) The amendment and the legislation are directed only against activities of the State and of its authorized agents. It does not create or add to the rights of one citizen as against another; it is, rather, a guranty against encroachment by the State and its authorized agents upon the rights of the citizen under the Constitution of the United States. *United States* v. *Cruikshank* (92 U. S. 542, 23 L. ed. 588); *Civil Rights cases* (109 U. S. 3, 3 Sup. Ct. 18, 27 L. ed. 835); *Hodges* v. *United States* (203 U. S. 1, 27 Sup. Ct. 6, 51 L. ed. 65; *United States* v. *Powell* (C. C., 151 F. 648, affirmed 212 U. S. 564, 29 Sup. Ct. 690, 53 L. ed. 653); *United States* v. *Wheeler* (D. C. 254 F 611, affirmed 254 U. S. 281, 41 Sup. Ct. 133, 65 L. ed. 270)." *United States* v. *Trierweiler*, 52 F. Supp. p. 5.

In the case of *Screws et al* v. *United States* (65 Supreme Court Reporter, p. 31) several peace officers were indicted, because of their beating to death of a Negro under the section 20 of the Criminal Code (18 U. S. C. 52), which provides as follows:

"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."

In connection with its holding, the following language is of interest:

"It is only State action of a 'particular character' that is prohibited by the 14th amendment and against which the amendment authorizes Congress to afford relief. *Civil Rights Cases* (109 U. S. 3, 11, 13, 3 S. Ct. 18, 21, 23, 27, L. ed. 835). Thus Congress, in section 20 of the Criminal Code, did not undertake to make all torts of State officials Federal crimes. It brought within section 20 only specified acts done 'under color' of law and then only those acts which deprived a person of some right secured by the Constitution or laws of the United States.

"This section was before us in *United States* v. *Classic* (313 U. S. 299, 326, 61 S. Ct. 1031, 1043, 85 L. ed. 1368); where we said: 'Misuse of power, possessed by virtue of State law and made possible only because the wrongdoer is clothed with the authority of State law, is action taken "under the color of" State law.' In that case, State election officials were charged with failure to count the votes as cast, alteration of the ballots, and false certification of the number of votes cast for the respective candidates (313 U. S. at pp. 308, 309, 61 S. Ct. at pp. 1034, 1035, 85 L. ed. 1368). We stated that those acts of the defendants 'were committed in the course of their performance of duties under the Louisiana statute requiring them to count the ballots, to record the result of the count, and to certify the result of the election' " (U. S. 65 S. Ct. p. 1039).

Fourteenth corpus juris secundum, at page 1161, in discussing the problem with which we are involved observes as follows:

"The rights and privileges secured or guaranteed by the 13th, 14th, and 15th amendments to the Constitution of the United States are subjects of legitimate protection by the law-making power of the Federal Government under the power expressly conferred on Congress to enforce the provisions conferring these rights by appropriate legislation. Generally speaking, whatever legislation is

appropriate, that is adapted to carry out the objects the amendments have in view, whatever tends to enforce submission to the prohibitions they contain and to secure to all persons the enjoyment of perfect equality of civil rights and the equal protection of the laws against State denial or invasion, if not prohibited, is brought within the domain of congressional power.

"Under the 13th amendment the legislation, so far as necessary or proper to eradicate all forms and incidents of slavery and involuntary servitude, may be direct and primary, operating on the acts of individuals, whether or not sanctioned by State legislation. There is a distinction, however, between the powers of Congress under the 13th amendment and its powers under the 14th amendment.

"Under the 14th amendment, the legislation must necessarily be, and can only be, corrective in its character, addressed to counteract and to afford relief against State regulations or proceedings. A similar view has been taken in respect of the 15th amendment. The 14th amendment does not empower Congress to legislate on matters within the domain of State legislation nor to legislate against the wrongs and personal action of citizens within the States, nor to regulate and control the conduct of private citizens. Hence an enactment which exceeds the limits of corrective legislation and inflicts penalties for the violation of rights belonging to citizens of the State as distinguished from citizens of the United Sates is not authorized by such amendment, so far as its operation within the States is concerned.

"The amendments here under consideration do not authorize Congress to enact a statute which assures to all persons within the jurisdiction of the United States the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances, theaters, and other places of public amusement, insofar at least as the operation of such a statute within the several States is concerned, and, to that extent at least, such a statute is invalid."

11 Corpus Juris, page 803, recognizes the principle annunciated throughout this memorandum.

"Under the 14th amendment the legislation must necessarily be, and can only be, corrective in its character, addressed to counteract and to afford relief against State regulations or proceedings. The same is true of the 15th amendment. The amendments do not empower Congress to legislate on matters within the domain of State legislation or to legislate against the wrongs and personal action of citizens within the States, or to regulate and control the conduct of private citizens. Hence an enactment which exceeds the limits of corrective legislation and inflicts penalties for the violation of rights belonging to citizens of the United States is unauthorized and necessarily void as to such excess, so far as its operation within the States is concerned.

Rottschaefer on Constitutional Law discusses the Federal power on enforcing the amendment as follows:

"The 5th section of the 14th amendment confers upon Congress the power to enforce its provisions by appropriate legislation. The principal method for its enforcement is the judicial review by the Supreme Court of State action alleged to conflict with its provisions.

"There remains for consideration at this point the extent of the powers possessed by Congress under the provisions of the amendment conferring upon it the power to enforce its provisions by appropriate legislation. The primary factor in defining the scope of its powers is the fact that the limitations heretofore, referred to are imposed upon the States. It may, accordingly, enact any corrective legislation that may be necessary and proper for counteracting State action which the State is prohibited by the amendment from taking or enforcing. This includes the power of punishing those who purport to exercise a State's power so as to impair or defeat rights protected by its provisions, and of removing a case from a State court in which they are being denied to a Federal court where they will be upheld. It lies within the discretion of Congress how it will compel the State and its instrumentalities to observe the rights protected by this amendment. Its power over the acts of individuals who neither act nor purport to act under authority of a State was not enlarged by the amendment, and it cannot punish them for such acts on the basis of any grant of power made by its provisions. The foregoing principles apply also to the powers conferred upon it under other amendments that merely limit action by the several States. The principal method for enforcing compliance by the States with the limitations imposed on them by these provisions of the Federal Constitution has been, and still is, judicial review of their attempts to enfore action in contravention thereof."

"Social rights: The purely social relations of citizens are not regulated by the State and Federal constitutions. While the 14th amendment to the Federal Constitution secures to all citizens, without distinction of race or color, equality of rights of a civil or political kind, it does not confer rights of a purely social or domestic nature, the regulation of which belongs to the States" (Corpus Juris Secundum 16, page 581).

In sustaining a judgement granting a writ of habeas corpus to a person indicated for bribing Negro voters to refrain from voting in violation of United States Revised Statutes, Section 5507, which provides as follows:

"SEC. 5507. Every person who prevents, hinders, controls, or intimidates another from exercising, or in exercising the right of suffrage, to whom that right is guaranteed by the Fifteenth amendment to the Constitution of the United States, by means of briberty or threats of depriving such person of employment or occupation, or of ejecting such person from a rented house, lands, or other property, or by threats of violence to himself or family, shall be punished as provided in the preceding section."

The court in *James* v. *Bowman* (23 Supreme Court Reporter, 678), observed as follows:

"These authorities show that a statute which purports to punish purely individual action cannot be sustained as an appropriate exercise of the power conferred by the 15th amendment upon Congress to prevent action by the State through some one or more of its official representatives, and that an indictment which charges no discrimination on account of race, color, previous condition of servitude is likewise destitute of support by such amendment.

"It would certainly be dangerous if the legislature could set a net large enough to catch all possible offenders, and leave it to the courts to step inside and say who could be rightfully detained and who should be set at large. This would, to some extent, substitute the judicial for the legislative department of the Government. * * * To limit this statute in the manner now asked for would be to make a new law, not to enforce an old one. This is no part of our duty."

The following language used in the *Slaughterhouse* cases (83 U. S. 395), is an excellent discussion by the Court on the type of privileges and immunities secured by the Constitution:

"In the case of *Paul v. Virginia* (8 Wall. 180, 19 L. ed. 360), the court, in expounding this clause of the Constitution, says that 'the privileges and immunities secured to citizens of each State in the several States, by the provision in question, are those privileges and immunities which are common to the citizens in the latter States under their Constitution and laws by virtue of their being citizens.'

"The constitutional provision there alluded to did not create those rights, which it called privileges and immunities of citizens of the States. It threw around them in that clause no security for the citizen of the State in which they were claimed or exercised. Nor did it profess to control the power of the State governments over the rights of its own citizens.

"Its sole purpose was to declare to the several States, that whatever those rights, as you grant or establish them to your own citizens, or as you limit or qualify, or impose restrictions on their exercise, the same, neither more nor less, shall be the measure of the rights of citizens of other States within your jurisdiction.

"It would be the vainest show of learning to attempt to prove by citations of authority, that up to the adoption of the recent amendments, no claim or pretense was set up that those rights depended on the Federal Government for their existence of protection, beyond the very few express limitations which the Federal Constitution imposed upon the States—such, for instance, as the prohibition against ex post facto laws, bills of attainder, and laws impairing the obligation of contracts. But with the exception of these and a few other restrictions, the entire domain of the privileges and immunities of citizens of the States, as above defined, lay within the constitutional and legislative power of the States, and without that of the Federal Government. Was it the purpose of the 14th amendment, by the simple declaration that no State should make or enforce any law which shall abridge the privileges and immunities of citizens of the United States, to transfer the security and protection of all the civil rights which we have mentioned, from the States to the Federal Government? And where it is declared that Congress shall have the power to enforce that article, was it intended to bring within the power of Congress the entire domain of civil rights heretofore belonging exclusively to the States?"

"All this and more must follow, if the proposition of the plaintiffs in error be sound. For not only are those rights subject to the control of Congress whenever in its discretion any of them are supposed to be abridged by State legislation, but that body may also pass laws in advance, limiting and restricting the exercise of legislative power by the States, in their most ordinary and usual functions, as in its judgment it may think proper on all such subjects. And still further, such a construction followed by the reversal of the judgments of the Supreme Court of Louisiana in these cases would constitute this court a perpetual censor upon all legislation of the States, on the civil rights of their own citizens, with authority to nullify such as it did not approve as consistent with those rights, as they existed at the time of the adoption of this amendment. The argument, we admit, is not always the most conclusive which is drawn from the consequences urged against the adoption of a particular construction of an instrument. But when, as in the case before us, these consequences are so serious, so far reaching and pervading, so great a departure from the structure and spirit of our institutions; when the effect is to fetter and degrade the State governments by subjecting them to the control of Congress, in the exercise of powers heretofore universally conceded to them of the most ordinary and fundamental character; when in fact it radically changes the whole theory of the relations of the State and Federal Governments to each other and of both these governments to the people; the argument has a force that is irresistible, in the absence of language, which expresses such a purpose too clearly to admit of doubt" (Slaughter House Cases, 83 U. S. 395, at p. 408) July 14, 1949.

ADDENDUM

To bring the above memorandum of authorities more up to date, the following is quoted verbatim from recent United States Supreme Court decisions:

"(3) Since the decision of this Court in the Civil Rights Cases, 1883, 109 U. S. 3, 3 S. Ct. 18, 27 L. Ed. 835, the principle has become firmly embedded in our constitutional law that the action inhibited by the first section of the 14th amendment is only such action as may fairly be said to be that of the States. That amendment erects no shield against merely private conduct, however discriminatory or wrongful" (*Shelley* v. *Kraemer* (1948), 68 S. Ct., at p. 842).

"The pattern was established by *United States* v. *Cruikshank* (92 U. S. 542, 23 L. Ed. 588). The defendants were indicted for conspiring to deprive some Negro citizens of rights secured by the Constitution. This Court affirmed the decision of the circuit court arresting judgment entered on a verdict of guilty. It found that counts alleging interference with rights secured by the 1st, 2d, 14th and 15th amendments were objectionable because the rights asserted were not 'granted or secured by the Constitution or laws of the United States' within the meaning of the statute. 92 U. S. at 551, 23 L. Ed. 588. The pattern set by this case has never been departed from" (*United States* v. *Williams* (1951), 71 S. Ct., at p. 586).

"This statutory provision has long been dormant. It was introduced into the Federal statutes by the act of April 20, 1871, entitled, 'An Act to enforce the Provisions of the Fourteenth Amendment to the Constitution of the United States, and for other purposes.' The act was among the last of the reconstruction legislation to be based on the 'conquered province' theory which prevailed in Congress for a period following the Civil War. This statute, without separability provisions, established the civil liability with which we are here concerned as well as other civil liabilities, together with parallel criminal liabilities. It also provided that unlawful combinations and conspiracies named in the act might be deemed rebellions, and authorized the President to employ the militia to suppress them. The President was also authorized to suspend the privilege of the writ of habeas corpus. It prohibited any person from being a Federal grand or petit juror in any case arising under the act unless he took and subscribed an oath in open court 'that he has never, directly or indirectly, counseled, advised, or voluntarily aided any such combination or conspiracy.' Heavy penalties and liabilities were laid upon any person who, with knowledge of such conspiracies, aided them or failed to do what he could to suppress them.

"The act, popularly known as the Ku Klux Act, was passed by a partisan vote in a highly inflamed atmosphere. It was preceded by spirited debate which pointed out its grave character and susceptibility to abuse, and its defects were soon realized when its execution brought about a severe reaction.

"The provision establishing criminal conspiracies in language indistinguishable from that used to describe civil conspiracies came to judgment in United States v. Harris ((1883), 106 U. S. 629, 1 S. Ct. 601, 27 L. Ed. 290). It was held un-

constitutional. This decision was in harmony with that of other important decisions during that period by a court, every member of which had been appointed by President Lincoln, Grant, Hayes, Garfield, or Arthur—all indoctrinated in the cause which produced the 14th amendment, but convinced that it was not to be used to centralize power so as to upset the Federal system.

* * * * * * *

"the Court recently unanimously declared, through the Chief Justice:

"Since the decision of this Court in the Civil Rights cases (1883, 109 U. S. 3, 3 S. Ct. 18, 27 L. Ed. 835), the principle has become firmly embedded in our constitutional law that the action inhibited by the first section of the 14th amendment is only such action as may fairly be said to be that of the States. That amendment erects no shield against merely private conduct, however discriminatory or wrongful.'

"And Mr. Justice Douglas, dissenting, has quoted with approval from the Cruikshank case, " 'The 14th amendment prohibits a State from denying to any person within its jurisdiction the equal protection of the laws; but this provision does not, any more than the one which precedes it * * * add anything to the rights which one citizen has under the Constitution against another' (92 U. S. (at) p(ages) 554–555, 23 L. Ed. 588.)" And "The only obligation resting upon the United States is to see that the States do not deny the right. This the amendment guarantees, but no more. The power of the National Government is limited to the enforcement of this guaranty.' " He summed up: 'The 14th amendment protects the individual against State action, not against wrongs done by individuals" (citing *United States* v. *Williams*, 341 U. S. 70, 92, 71 S. Ct. 581, 593) (*Collins* v. *Hardyman* (1951), 71 S. Ct. at pp. 939–940).

L. H. PEREZ,
District Attorney, 25th Judicial District of Louisiana
(For the Parishes of Plaquemines and St. Bernard).

Senator ERVIN. The committee will take a recess until 10 a. m. Monday, March 4.

(Whereupon, at 5 p. m., the committee was recessed, to reconvene at 10 a. m., Monday, March 4, 1957.)

CIVIL RIGHTS—1957

MONDAY, MARCH 4, 1957

UNITED STATES SENATE,
Subcommittee on Constitutional Rights
of the Committee on the Judiciary,
Washington, D. C.

The subcommittee met, pursuant to recess, at 10 a. m., in room 457, Senate Office Building, Senator Olin D. Johnston presiding.

Present: Senators Johnston, Ervin and Hruska.

Also present: Charles H. Slayman, Jr., chief counsel, and James N. Caldwell, Jr., assistant counsel, of the Constitutional Rights Subcommittee; and Robert Young, professional staff member, Judiciary Committee.

Senator JOHNSTON. The subcommittee will come to order. Everybody be seated as quickly as you can.

Senator ERVIN. Senator, if you will excuse me——

Senator JOHNSTON. We want you here.

Senator ERVIN. I will come back in a few minutes.

Senator JOHNSTON. Counsel to the subcommittee has a statement he wants to make at this time.

Mr. SLAYMAN. Thank you, Senator Johnston.

As chief counsel of the subcommittee, I want to announce that Senator Hennings, the regular chairman of this subcommittee, is not able to be here today and has asked Senator Olin D. Johnston, a member of this subcommittee, to be chairman for today's hearing.

Senator Hennings will be here as soon as possible; but since there is a conflict with a meeting of the full committee, the Senate Judiciary Committee, Senator Hennings has to be there for certain committee business.

We had scheduled the subcommittee hearing for today because this was the date that seemed to be the most convenient for the most number of official witnesses from South Carolina.

Senator Johnston, I am going to have to leave very shortly to join Senator Hennings, and with your permission I would like to have our assistant counsel, Mr. James Caldwell, Jr., of Columbia, S. C., remain here to assist you as staff member in any way possible.

Senator JOHNSTON. Thank you. You may feel free to leave at any time you wish.

Call the first witness.

Mr. SLAYMAN. The Honorable Strom Thurmond, United States Senator from the State of South Carolina.

STATEMENT OF HON. STROM THURMOND, UNITED STATES SENATOR FROM THE STATE OF SOUTH CAROLINA

Senator THURMOND. Mr. Chairman and gentlemen of the committee, before beginning my statement this morning, I want to take the opportunity to welcome so many distinguished South Carolina lawyers up here.

I see in the audience here today Mr. Watson and Mr. Lynn, I believe, who are observers; Mr. Joe Rogers, a member of the State legislature; Senator Thomas Wofford; the Honorable Clint Graydon; Assistant Attorney General Dan McLeod; Senator John West of Camden; Mr. Robert McNair of Allendale, chairman of the South Carolina House judiciary committee; Col. Tom Pope, former speaker of the house, and Mr. Jim Spruill of Chesterfield, a member of the South Carolina House ways and means committee.

We are delighted to have all these gentlemen here and I just wanted to join in extending them a welcome to Washington. Any courtesy that we can extend them while here will be a pleasure, and I want to join the chairman in extending them a joint welcome to Washington.

Senator JOHNSTON. I want to say I want them all to feel free to speak out and let us know their feelings in this matter.

You may proceed.

Senator THURMOND. Mr. Chairman, my purpose in appearing here today is to state my opposition to the so-called civil-rights bills now pending before this subcommittee.

On February 26 I appeared before the subcommittee of the House of Representatives which is also considering similar bills. At that time I made a lengthy statement which I wish to request be made a part of the record of the hearings of this committee. I shall make only a few remarks concerning the pending bills.

The proposals embodied in the so-called civil-rights bills pending before this committee are: (1) Unconstitutional generally, (2) unneeded entirely, and (3) unworthy of consideration by the Congress.

As a general class, these bills are unconstitutional because they attempt to usurp or infringe upon the rights of the States as guaranteed by the United States Constitution. We must never forget that all the power held by the Federal Government is power that was granted to it by the States in the Constitution.

Only those powers specifically delegated by the States to the Federal Government in the Constitution are within the scope of Federal authority. There is no inherent authority on the part of the Federal Government.

Even the United States Supreme Court ruled against such a generalization when President Truman attempted to employ that argument in the Steel Seizure case in April 1952.

It is true that the Congress has the power to make laws in the fields listed in the Constitution. However, in matters which would infringe upon the rights of the States, the Congress is barred, just as the President, from legislating on any theory of inherent authority, or, as the Supreme Court has in effect legislated, on the basis of "changing times."

In the statement which I have requested be made a part of the record, I have pointed out in some detail the effective coverage and operation of the laws of the States in the fields under consideration in these bills.

Even if such legislation were constitutional, there would be no reason or necessity for Federal legislation.

The States are doing a better job of using their police powers appropriately than could ever be done by a department or agency of the Federal Government. Public officials on the scene can best administer the law.

In all the hearings of this and the 84th Congress on these so-called civil-rights proposals, I have found no good and valid reason for their enactment. No substantial evidence has been presented to show, even if the bills were constitutional, that they are needed.

The unworthiness of such legislation is demonstrated by the fact that political leaders in both parties intensified their drive for the bills after the election returns last fall indicated a shifting of bloc votes.

One party then seized upon this type of legislation as a means of persuading the so-called minorities that they should continue to support that party. The other party, sensing the importance of the shift politically, decided to make an even greater play for the minority bloc votes.

What each political party should be doing is to devote itself to constitutional government, so that no citizen anywhere in this country would have to support candidates purely on a sectional basis. Disregard for constitutional principles forces division along sectional lines.

Those who propose unconstitutional schemes are responsible for sectional divisions; not those who defend against them.

At this very time the Congress is considering a resolution which is designed to present a united American front to the world. Foreign dictators must realize that Americans join hands in emergencies, regardless of domestic difficulties and divisions.

However, these so-called civil-rights bills tend to divide Americans. They have added to the tensions and unrest which did not exist until recent unconstitutional decisions of the Supreme Court destroyed the faith of a great many people in the Court.

Propagandists have tried to sell the American people on the idea that the defeat of these bills would provide Russia with new arguments against us. That is not a valid reason in favor of the bills. If we permit Russia to control our domestic policy by deferring to what she might say about us, then we shall have bowed to the dictates of communism. Instead of considering what Russia might say, we should be concerned with the mandate given to the Congress by the people of the United States in ordaining the Constitution as the basic law of the land.

Americans will stand together against communism. But we who believe in constitutional government cannot stand with those who advocate these vicious proposals now before the committee.

Mr. Chairman, I hope this committee will vote against these bills. I urge that this be done, and that a start be made to restore constitutional guaranties instead of further tearing them down.

Mr. Chairman, I wish to thank you and the committee for your courtesy in hearing this statement, and I shall leave the statement, which I shall place in the record, which I made before the House committee last week.

Senator JOHNSTON. We will be glad to put that in the record.

(The document is as follows:)

STATEMENT BY SENATOR STROM THURMOND OF SOUTH CAROLINA IN OPPOSITION TO PENDING CIVIL-RIGHTS BILLS

Mr. Chairman and gentlemen of the committee, I am here today to oppose the so-called civil-rights bills.

Tyranny by any other name is just as bad.

In other countries tyranny has taken the forms of fascism, communism, and absolute monarchy. I do not want to see it foisted on the American people under the alias of civil rights.

Real civil rights and so-called civil rights should not be confused. Everybody favors human rights. But it is a fraud on the American people to pretend that human rights can long endure without constitutional restraint on the power of government.

The actual power of the Federal Government should not be confused with power longed-for by those who would destroy the States as sovereign governments.

USURPATION BY JUDICIARY

There have been a number of instances of attempted and real usurpation of power by the Federal Government, which these pending bills would attempt to legalize, expand, and extend.

The most notorious illustration of this type of usurpation is the May 17, 1954, school segregation decision by the United States Supreme Court. Since that time there have been several other decisions by the Court which I think have wakened people all over the country who previously paid little attention, or cared little, what the result might be in the school segregation cases.

There are two recent cases. One arose in Pennsylvania and one in New York. The Pennsylvania case is *Pennsylvania* v. *Steve Nelson*, decided April 2, 1956, dealing with the right of the State to take action against a Communist. The Supreme Court of the United States ruled that because there was a Federal sedition law, the State of Pennsylvania had no authority in that field. The laws of 42 States were invalidated by the decision. Even the protest of the Department of Justice that the laws of the States did not interfere with enforcement of the Federal law did not stop the Court.

The author of the Federal law, the Honorable Howard Smith of Virginia, has stated there was no intent embodied in the Federal act to prohibit the States from legislating against sedition.

The second case to which I refer arose when the city of New York dismissed from employment a teacher who had refused to disclose whether he was a Communist when questioned by duly constituted authority. Here again the United States Supreme Court ruled against the power and authority of the local government contained in the charter of the city of New York.

USURPATION BY EXECUTIVE

Now let me refer briefly to some attempts at usurpation of the rights of the States by the executive branch of the Federal Government. Administrators in some Federal departments and agencies have issued directives having the effect of laws which have never been enacted by the Congress.

A specific illustration is that of the Civil Aeronautics Administration issuing a directive last year to withhold Federal funds from facilities in the construction of airports where segregation of the races is practiced.

There is absolutely no basis in law for this administrative action, but by use of a directive or an edict the administrator effected a result just as though a law had been enacted.

Other attempts at Federal interference from the executive branch with the rights of the individual citizen is demonstrated by the Contracts Compliance Commission. This Commission has dictated that contractors working on Federal projects must employ persons of both the white and Negro races, whether the contractors wish to do so or not. The strength of the Commission lies in the power to withhold contracts, or threatening to do so, if a contractor fails to carry out the dictates of the Commission.

ATTEMPTED USURPATION BY CONGRESS

I can think of no better illustration of attempted usurpation of the rights of the States by the legislative branch of the Federal Government than what is going

on here now. I believe that the Congress, by attempting to enact these so-called civil rights bills, is invading the rights of the States.

I want to make it clear that I am not appearing here today in defense of my State, or in defense of the Southern States generally, because I do not believe my State or the Southern States need a defense. But this is not a mere concern of the moment with me.

For many years I have been deeply troubled by the problem of what is happening to constitutional government in this country. That is what I am defending today. The illustrations I have cited provide a basis for my concern, and there are many other instances which might also be cited.

NO DOUBT AS TO CONSTITUTION

Wherever a person lives in this country, whatever political faith he holds, whatever he believes in connection with any matter of interest, he has one firm basis for knowing his rights. Those rights are enumerated in the Constitution of the United States. I believe in that document. I believe that it means exactly what it says, no more and no less.

If American citizens cannot believe in the Constitution, and know that it means exactly what it says, no more and no less, then there is no assurance that our representative form of government will continue in this country.

I believe that people all over the country are beginning to realize that steps should be taken to preserve the constitutional guarantees which are being infringed upon in many ways.

I believe we should also take steps to regain for the States some of the powers previously lost in unwarranted assaults on the States by the Federal Government.

STATE OFFICIALS UNDERSTANDING

The administration of laws relating to civil rights is being carried out much more intelligently at the local levels of government than they could ever possibly be administered by edicts handed down from Washington. State officials and county officials know the people and know the problems of those people. Most officials of the Federal Government in Washington know much less about local problems than do the public officials in the States and in the counties.

If these so-called civil rights bills should be approved, then we must anticipate that the Federal Government, having usurped the authority of local government, will try to send Federal detectives snooping throughout the land. Federal police could be sent into the home of any citizen charged with violating the civil rights laws.

If there are constitutional proposals here which any of the States wish to enact, I have no objection to that. Every State has the right to enact any constitutional law which has not been specifically delegated to the Federal Government in the Constitution.

On the other hand, I am firmly opposed to the enactment by Congress of laws in fields where the Congress has no authority, or in fields where there is no necessity for action by the Congress.

From my observations, I have gained the strong feeling that most of the States are performing their police duties well. I believe that the individual States are looking after their own problems in the field of civil rights better than any enactment of this Congress could provide for, and better than any commission appointed by the Chief Executive could look after them.

BILL OF RIGHTS GUARANTEES

Before taking up specific provisions of several of the bills pending before the committee, I should like to read for you two of the basic provisions in the Bill of Rights.

The Ninth Amendment to the Constitution provides:

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

The Tenth Amendment to the Constitution provides:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Those last two amendments of the Bill of Rights make clear the intent of the founding fathers. Their intent was that all rights not specifically listed, and all powers not specifically delegated to the Federal Government, would be held inalienable by the States, and the people.

BILL OF RIGHTS UNALTERED

This basic concept of the Bill of Rights has never been constitutionally amended, no matter what the Federal courts have done, no matter what the executive branch of the Federal Government has done, and no matter what the Congress might have done or attempted to do in the past. The people and the States still retain all rights not specifically delegated to the Federal Government.

Let us also consider these proposals from a practical standpoint.

What could be accomplished by a Federal law embodying provisions which are already on the statute books of the States that cannot be accomplished by the State laws? I fail to see that any benefit could come from the enactment of Federal laws duplicating State statutes which guarantee the rights of citizens. Certainly the enactment of still other laws not approved by the States could result only in greater unrest than has been created by the recent decisions of the Federal courts.

MR. DOOLEY WAS RIGHT

The truth is very much as Mr. Dooley, the writer-philosopher, stated it many years ago, that the Supreme Court follows the election returns. If he were alive today, I believe Mr. Dooley would note also that the election returns follow the Supreme Court.

And now it looks as if some people are trying to follow both the Supreme Court and the election returns.

Having made these general comments, I would like to comment specifically on some of the pending proposals. First, on the proposal for the establishment of a Commission on Civil Rights.

COMMISSION UNNEEDED

There is absolutely no reason for the establishment of such a commission. The Congress and its committees can perform all of the investigative functions which would come within the sphere of constitutional authority.

I do not believe the members of any commission, however established, could represent the views of the people of this country as well as the members of Congress can. I hope that the members of this committee and the members of the Congress will not permit themselves to be persuaded that anyone else can look after the problems of the people any better, or as well, as the Congress can.

Furthermore, there is no justification for an investigation in this field.

I hope this committee will recommend against the establishment of such a commission.

WOULD STIR UP TROUBLE

Another proposal would provide for an additional Assistant Attorney General to head a new Civil Rights Division in the Justice Department. I have searched the testimony given by the Attorney General last year before the committees of the Congress with regard to this proposal, and I have found no valid reason why an additional Assistant Attorney General is needed.

I can understand how an additional Assistant Attorney General might be needed if the Congress were to approve a Civil Rights Division and enact some of the other proposals in the so-called civil rights bill. But they are proposals not dealing with criminal offenses—they deal with efforts of the Justice Department to enter into civil actions against citizens.

If the Justice Department is permitted to go into the various States to stir up and agitate persons to seek injunctions and to enter suits against their neighbors, then the Attorney General might need another assistant. However, the Justice Department should avoid civil litigation, instead of seeking to promote it.

I hope the members of this committee will recognize this proposal as one which could turn neighbor against neighbor, and will treat it as it deserves by voting against it.

WORSE THAN EX POST FACTO

Another proposal of the so-called civil rights bills is closely related to the one I have just discussed. It would provide that:

Whenever any persons have engaged or about to engage in any acts or practices which would give rise to a cause of action * * * the Attorney General may institute for the United States or in the name of the United States but

for the benefit of the real party in interest, a civil action or other proper proceeding or redress or preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order.

Now that proposal is one which I would label as even more insidious than any ex post facto law which could possibly be imagined.

An ex post facto law would at least apply to some real act committed by a person which was not in violation of law at the time. The point is, however, in such instance the person would actually have committed the act.

This proposal would permit the Justice Department to secure an injunction from a Federal judge or to institute a civil suit on behalf of some person against a second person when the latter had committed no act at all. An injunction might be secured from a Federal judge charging a violation of the law without any evidence that a person even intended to do so.

How any person could support by oath a charge as to whether another person was about to engage in violating the law is beyond my understanding.

Many of the pioneers who settled this new continent came because they wanted to escape the tyranny of European despots. They wanted their families to live in a new land where everybody could be guaranteed the right to trial by jury, instead of the decrees of dictators.

Congress, as the directly elected representatives of the people, should be the last to consider depriving the people of jury trials. We should never consider it at all. But, if this proposal to strengthen the civil rights statutes is approved, that would be its effect.

AGENTS COULD MEDDLE

Under this provision, the Attorney General could dispatch his agents throughout the land. They would be empowered to meddle with private business, police elections, intervene in private lawsuits, and breed litigation generally. They would keep our people in a constant state of apprehension and harassment. Liberty quickly perishes under such government, as we have seen it perish in foreign nations.

A further provision of that same proposal would permit the bypassing of State authorities in such cases. The Federal district courts would take over original jurisdiction, regardless of administrative remedies, and the right of appeal to the State courts.

STATE COURTS STRIPPED

This could be a step toward future elimination of the State courts altogether. I do not believe the Congress has, or should want, the power to strip our State courts of authority and vest the Federal Courts with that authority.

Still another proposal among the so-called civil rights bills relates to the protection of voters against intimidation. I have had a search made of the laws of all 48 States and the right to vote is protected by law in every State.

SOUTH CAROLINA CONSTITUTION PROTECTS VOTER

In South Carolina, my own State, the constitution of 1895 provides in article III, section 5, that the General Assembly shall provide by law for crimes against the election laws and, further, for right of appeal to the State supreme court for any person denied registration.

The South Carolina election statute spells out the right of appeal to the State supreme court. It also requires a special session of the court if no session is scheduled between the time of an appeal and the next election.

Article II, section 15 of South Carolina's Constitution, provides that no power, civil or military, shall at any time prevent the free exercise of the right of suffrage in the State.

In pursuance of the constitutional provisions, the South Carolina General Assembly has passed laws to punish anyone who shall threaten, mistreat or abuse any voter with a view to control or intimidate him in the free exercise of his right of suffrage. Anyone who violates any of the provisions in regard to general, special or primary elections, is subject to a fine and/or imprisonment.

In this proposed Federal bill to protect the right to vote, a person could be prosecuted or an injunction obtained against him based on surmise as to what he might be about to do. The bill says that the Attorney General may institute proceedings against a person who has engaged or is about to engage in any act or practice which would deprive any other person of any right or privilege concerned with voting. This is the same vicious provision I referred to earlier in the so-called provision to strengthen the civil rights statutes.

NO LYNCHINGS IN FIVE YEARS

One of the most ridiculous proposals among the so-called civil rights bills is the antilynching bill.

I am as much opposed to murder in any form and wherever it occurs as anybody can be. I am also opposed to the Federal Government attempting to seize police power constitutionally belonging to the States.

At my request, the Library of Congress made a search of the records of cases classified as lynchings. For the 10 years of 1946 through 1955, the reports made by Tuskegee Institute listed 15 instances of what was classified as lynchings. For the past 5 years none was listed by Tuskegee, although one source listed three. The Library of Congress reported that it checked with the National Association for the Advancement of Colored People, here in Washington, and an official of that organization declined to state whether the NAACP classified the other three cases as lynchings.

Not all of the slayings classified as lynchings involved Negroes. Some of the persons were white.

The instances classified as lynchings during the past 10 years, all so classified being in six States of the South, totaled either 15 or 18, according to which figures you want to accept. The population of those six States is approximately sixteen million people.

6,630 MURDERS IN THREE CITIES

Now I want to give you some information about three cities which have a total population of about fourteen million people, about two million less than the six States to which I referred.

These cities are Chicago, New York and Washington.

According to Federal Bureau of Investigation records, the three cities had a total of 6,630 murders and nonnegligent manslaughters during the 10-year period of 1946 through 1955. Chicago, with a population of 4,920,816, had 2,815; New York, with a population of 7,891,957, had 3,081; and Washington (the District of Columbia) with a population of 802,178, had 734.

These facts speak for themselves. This committee has before it a bill purporting to prevent lynching when there has been in 10 years a total of 15 lynchings, so classified, in States having a total of population of about sixteen million. But the 6,630 killings which have taken place in three cities of fourteen million population have attracted no attention here.

32 KILLINGS IN D. C. IN 6 MONTHS

In the District of Columbia alone, during the first half of 1956, the last period for which statistics are available, 32 slayings were recorded. That was more than twice the number of lynchings classified by Tuskegee Institute during the past 10 years, and Washington has only about one-twentieth the population of the States involved.

This is not to say that I believe any Federal action is called for in connection with murders and mob slayings in Chicago and New York. But it would appear appropriate to start with the city of Washington, which is directly under the jurisdiction of the Congress, if legislation would help to reduce the present homicide rate.

The fact that no effort has been made in this direction makes it crystal clear that some crocodile tears are being shed before this committee.

SOUTH CAROLINA HAS ANTILYNCH LAW

Twenty of the 48 States already have specific antilynching laws. Seven of these States are in the deep South. They are: Alabama, Georgia, North Carolina, South Carolina, Tennessee, Texas, and Virginia. Two others, Kentucky and West Virginia, are considered border States. The other 11 are: California, Illinois, Indiana, Kansas, Minnesota, Nebraska, New Jersey, New Mexico, New York, Ohio, and Pennsylvania.

The statistics on lynchings, to which I referred, failed to include hundreds of mob or gang slayings I have read about in the newspapers in some of the Northern States which have antilynching laws. I think it is most regrettable than antilynch laws have not been invoked in some of those gang slayings.

COUNTIES FINANCIALLY LIABLE FOR LYNCHINGS

South Carolina not only has a criminal statute against lynchings, it also has a constitutional provision, article 6, section 6, which provides:

"In all cases of lynching when death ensues, the county where such lynching takes place shall, without regard to the conduct of the officers, be liable in exemplary damages of not less than $2,000 to the legal representatives of the person lynched."

Plaintiffs in years past have brought civil actions under this provision and have collected damages. There has been no death in South Carolina classified as a lynching in 10 years.

FEPC OF RUSSIAN ORIGIN

Another proposal among these so-called civil-rights bills is one "To prohibit discrimination in employment because of race, religion, color, national origin, or ancestry." This is also referred to under a short title as "The Federal Equality of Opportunity in Employment Act."

This old FEPC proposal was patterned after a Russian law written by Stalin about 1920, referred to in Russia as Stalin's "All-races law." The Russian law does not include the word "religion" because Stalin did not want to admit the existence of religion in Russia at the time he wrote the law. But the provisions in the FEPC proposal faithfully follow the Russian pattern and Stalin's "all-races law."

The so-called Fair Employment Practices Commission should have nother name because the purpose of the Commission requires another name.

FORCED EMPLOYMENT PRACTICES COMMISSION

Instead of calling it a Fair Employment Practices Commission, it should be called a Forced Employment Practices Commission.

The proponents of this type legislation advocate that an employer should be forced to hire persons who might, for various reasons, be undesirable as employees. Labor unions would be affected in the same way.

What the proponents of this legislation have not taken into consideration is that the employers, who provide the jobs, themselves become a minority and are discriminated against and abused, if put under this law.

I don't believe that Congress, or any official of the executive branch of the Government, or the Supreme Court, sitting here in Washington, is as well trained as the individual employer or labor union to decide who they need for the job to be done.

Although 12 States have enacted FEPC laws with enforcement provisions, 36 States have no such provision. To me that is sufficient evidence that a majority of the citizens in three-fourths of the States do not want or feel a need for FEPC, or that the people and their legislatures do not consider it constitutional.

My view is that the FEPC is absolutely unconstitutional because it deprives an employer of control of his business without due process.

NEGRO EDITOR BACKS SEGREGATION

If the proponents of the FEPC bill are directing the legislation principally at the status of Negroes in the South, I would like to refer them to a Negro editor for some information as to the real situation in the South.

I am talking about Davis Lee of Newark, N. J., who publishes the Newark Telegram. Mr. Lee has traveled all over this country during the past several years and has published many stories in his newspaper describing the excellent jobs held by Negroes in the South. He has described how many Negroes have been successful in establishing their own businesses. He has told the story of how Negroes have progressed generally throughout the South.

SEGREGATION PROTECTS NEGRO

Mr. Lee has consistently advocated maintaining segregation of the races because it is advantageous to the Negro. He has stated many times that Negroes are best protected within the framework of segregation, because they do not have to compete directly with more able white employees or white businessmen in a segregated system.

He says this gives the Negro an advantage, because under segregation he can carry on a successful business, or compete as an employee, with persons of similar

training and background much more successfully than he could if forced to compete in an integrated society.

If the purpose of the advocates of the FEPC is to assist and uplift the Negro and other minority races, I would suggest that they read what Mr. Lee has written. They should attempt to provide assistance without attempting to dictate to any race what its relationship must be to any other race.

There is ample evidence the Negro is better off today under the type segregation practiced in the South than under integration or the type segregation practiced outside the South. The question then becomes whether the purpose of the legislation is to help the Negro or whether it is designed to try to force integration of the white and Negro races in the South.

As far as the question of fair treatment is concerned, I believe that Mr. Lee also could inform this committee as to some of the pressures which have been brought on him, as an individual and as a New Jersey editor, because he has had the courage to publish his views, and present the facts he has found during his travels.

ONLY FIVE POLL TAX STATES

Finally, Mr. Chairman, I want to make reference to another proposal in this group of so-called civil-rights bills. This is the proposal to remove the poll tax as a requirement for voting.

While I was Governor of South Carolina, I proposed that the poll tax be removed in my State as a prerequisite for voting. The question was submitted to the people in a referendum and a large majority voted to remove that requirement.

This was done, as it should have been, by action of the general assembly in submitting the question to the people of the State involved.

Only 5 of the 48 States require the payment of a poll tax as a prerequisite to voting. If the people of those States desire to have the tax removed, they can do so through orderly processes established by the constitutions of those States. Action by the Federal Government is not needed to remove the poll tax in any of those States. Action by the Congress by statute would be in violation of the Constitution.

I believe the Attorney General of the State of Texas testified during the hearings last year that the poll tax in that State was earmarked as revenue for public education. In some States it may be necessary to maintain the tax to secure sufficient revenue to defray all of the costs of public education.

The Federal Government has invaded so many fields of taxation that it is terribly difficult for the States to find sufficient sources of revenue to carry on the normal operations of government.

Mr. Chairman, I appreciate the time which has been allocated to me. I would like to say in conclusion that I hope this committee will not recommend the enactment of any of these so-called civil-rights bills.

UNCONSTITUTIONAL AMENDING

I believe the effect of enactment of such legislation as these proposals would be to alter our form of government, without following the procedures established by the Constitution.

I believe the effect of enacting these bills into law would be to take from the States power and authority guaranteed to them by the Constitution.

In recent years there have been more and more assaults by the Federal Government on the rights of the States, as the Federal Government has seized power held by the States. In many instances, I believe, this has been done without a constitutional basis.

The States have lost prestige. But more important, the States have lost a part of their sovereignty whenever the Federal Government has taken over additional responsibilities. That loss might seem unimportant at the time, but gradually it could become a major part of the sovereignty of the States.

Officials of the Federal Government, whether in the Executive, Legislative, or the Judicial Branch, should not forget to whom they owe their allegiance. Each of us owes his allegiance to the Constitution and to the people—not to any agency, department, or person. We have taken an oath to support and defend the Constitution.

We must take into account the facts as they really are, and not be panicked by the organized pressures which so often beset public officials.

STATES CREATED UNION

We must not lose sight of the fact that the States created the Federal Union; the Federal Government did not create the States.

All of the powers held by the Federal Government were delegated to it by the States in the Constitution. The Federal Government had no power, and should have no power, which was not granted by the States in the Constitution.

If this Congress approves the legislation embodied in the bills pending before the committee, it will be an unwarranted attempt to seize power not rightfully held by the Congress or by any branch of the Federal Government.

I hope this committee will consider these facts and recommend the disapproval of these bills.

Senator THURMOND. I may have to leave before the hearing is finished to attend a committee meeting or meeting of the Senate, and I shall ask you and the committee to please excuse me if I do have to leave before that time.

Senator JOHNSTON. We understand. That is why some of the other members of the subcomimttee cannot attend.

If you will notice, my name appears on this list. I am not going to testify. It has not been customary for the members of the subcommittee to testify.

For that reason and to not take up the time, I am going to call the former United States Senator, Tom Wofford, if he would like to be heard at this time.

Will you please come around?

STATEMENT OF HON. THOMAS WOFFORD, FORMER UNITED STATES SENATOR

Mr. WOFFORD. Mr. Chairman and what members of the committee are here, for my short service in the United States Senate I realize that we often have hearings on other committees, but it causes me a great deal of disappointment that the delegation from South Carolina would be able to address their remarks and possibly answer questions only to the senior Senator from South Carolina and the Senator from North Carolina.

Senator JOHNSTON. We wish they would just leave it up to us to decide this question.

Mr. WOFFORD. We certainly do, Mr. Chairman, because there are lots of questions that I was hoping they would ask us, and whether or not, as I say from my little short term in the United States Senate, a Senator has to make up his mind as to which committee he is going to, and I do not know to what committees the other Senators have seen fit to attend in lieu of this committee meeting, I consider it the most important hearings not only affecting the State of South Carolina but affecting the whole country.

Senator JOHNSTON. It might be informative for me to state that the full Judiciary Committee is meeting and there will be voting upon a United States Supreme Court Justice this morning.

Also, I went to another meeting at 9:30 and started off the Agriculture Subcommittee on Corn. I left it to come up here and I am here at this committee as I really felt it was my duty to be here.

Mr. WOFFORD. As I understand it, the full Judiciary Committee is meeting this morning to consider a Supreme Court Justice.

Senator JOHNSTON. That is true. It is generally customary to give to Senators not present, after they get a quorum, the privilege of casting their vote as they see fit.

You may proceed.

Mr. WOFFORD. Thank you, sir.

Mr. Chairman, there is no use to take up your time and the time of the members of the full Judiciary Committee who will see fit to read my few remarks, to go into the general objection to the entire civil-rights bills that are now being considered by the judiciary subcommittee.

I say the entire number of bills. I don't object to all of them. I certainly have no objection to S. 1183 nor S. 1182 introduced by the distinguished Senator from the State of Georgia.

I certainly have no objection to them. They meet with our entire approval. When I say "our" I refer to my family. Of course I object to the bills upon the general grounds that they are unconstitutional. I object to them on the grounds that they are absolutely unneeded and unnecessary, and I object to them for the reason that this great Congress of ours could well spend their time on more important matters, rather than giving more than a passing consideration, if any at all, to this matter.

I want to tell this committee just a few things that even the introduction of these bills has done to our section of the country, and what they will do if, as, and when, they are passed.

As this committee well knows, even a common cottonfield rabbit will bite you if you hem him up long enough, and certainly nobody has ever accused the people of South Carolina of being a rabbit under any circumstances, whether they are hemmed up or not.

It is obvious to any intelligent man—and I am delighted to see that they finally got an admission from the Attorney General of the United States to that effect—that is the sole, real purpose of all these bills with reference to aiding the proposition of the nonsegregation of our public schools.

Now what have they done to us already in the South?

In the first place—and these bills affect the entire United States, and some Senators are going to realize it to their sorrow someday, I hope.

To begin with, they have destroyed the mutual trust and confidence that the whites and the colored people have gradually over the years, developed in our State.

They have already set us back as much as 30 years I would say with their arguments, their propaganda, and so forth.

To show the attitude of the good colored people and the good white people in South Carolina since the Clarendon case was decided by the colorblind Supreme Court, not a person has applied to enter a public school in the State of South Carolina. They don't want it any more than we want it. The whole thing is financed, advocated with all of their propaganda over our televisions, on radios, by the National Association for Advancement of Colored People, which I submit is as much a Communist organization as the Communist Party itself.

It breeds on trouble. It breeds on strife. Not a soul, as I say, applied in Clarendon County, and as you know, Mr. Chairman, that is the largest county in the State of South Carolina, with one of the lowest percentages of colored people there.

They are furnished with adequate, equal facilities. They have their own teachers. We have more colored teachers in the State of South Carolina than they have in the entire State of New York. We have more colored teachers—and I refer to colored teachers—per student than they have in any other State in the Union in South Carolina, paid on the same salary scale that the white teachers are paid.

But they have destroyed the confidence that we have in the colored race already, and the confidence that they have in us, which has been most sincere.

Iwill give you an illustration, sir, that I dare say as long as you have been in politics in our State, and so successfully, that you don't realize yourself.

It is a personal reference which I hate to make, but my sister Kate, my oldest sister Kate, who is now dead of cancer, at the time of her death was head of the rural education department at the University of the State of Florida. She was the first woman ever elected to public office in South Carolina, and she was elected superintendent of education.

The first thing that she asked the delegation to do was to give her a Negro assistant, a colored assistant, as they say, or a gentleman of color or a lady of color as Whitehead was wont to refer to them on occasions, which was unheard of in the State of South Carolina, because she was not in the position to properly supervise the colored school in the county of Laurens, and the delegation and the legislature, on the recommendation of the delegation from South Carolina, gave her a colored assistant who worked in her office in Laurens County and for whom she was responsible to the people of Laurens County.

She ran for reelection against six men and defeated them all, and that was the main issue in Laurens County, and knowing Laurens County like you do, you know the temperament of those people.

They were trying at that time to do something to help the colored race, and that, Mr. Chairman, was in the year 1924, not 1954, but in the year 1924. And I will ask you in all sincerity, could anybody be elected superintendent of education of Laurens County today and ask for the same thing?

In the first place, could he get it? In the second place, if he did get it, could he possibly be elected superintendent of education the next time he ran for reelection?

That is how close we were. That is what we were trying to do for them. We consider ourselves people who are liberal. We have the lunatic fringe on one side and we have it on the other, and we have our do-gooders to stir up trouble. They have done more harm to this country probably than any other group except the Communist Party. That is just one example.

We have a Sterling High School there, a colored school in Greenville. Not a person has applied to go to Greenville High School. They have their football games. They voluntarily segregate themselves. The white people sit on one side and the colored people sit on the other.

We support their bands. We contribute to the trips they make. We have done everything that we possibly can to be of some assistance to those poor people. That is what they have done. But now the people say "No, we are not going to do it."

They have a provision here—it has a number. It says "Mr. So and So introduced the following bill." It does not have any number. It refers to antilynching. That I would like to talk about a little while.

We have such a law in South Carolina. They have a provision here—and it is a strange thing that the provision provides for a minimum of recovery in a civil action of $2,000, and we have that in South Carolina, and every time there has ever been a lynching in South Carolina and a suit has been brought against the county, they have collected.

The last one there they collected. As a matter of a fact, they collected by a direct verdict of our State judges, for whom they seem to have no respect in our State. But they have a provision in there, and here is an illustration of what is going to happen. I am not going to say I advocate it. As a matter of fact I hate murder, I hate lynching, I hate mob rule. I hate to see people stood up in a garage in Chicago or Detroit who are shot down by machineguns. I hate to see the race riots in New Jersey or New York, and I hate lynching, I hate murder.

But here is what they are going to drive the people to. I spoke to the sheriff of our county, for instance, and asked him what he thought about this thing. I said "The way that is worded if you don't prosecute him properly in accordance with some federal judge, or if a mob takes him away from you, you are in Federal court, and you can be given I think 5 years and a $10,000 fine and put in the Federal penitentiary in Atlanta."

He said "That lynch bill does not worry me a bit. I have got a solution for it already," and they are thinking already and they are very, very resourceful.

Why he said "You know me," and I certainly do—"and I will do everything I possibly can to protect anybody, whether he is a colored man or a white man or anybody that a mob wants to take away from me."

But he says "I am not going to shoot anybody about him, if it is that horrible."

He said "I am going to do everything I can to get him out of the county, to get him to the penitentiary or to put him in another county where nobody knows where he is, where they will protect him, but if they surround me when I have that prisoner handcuffed to me, what is to prevent my pulling my pistol to defend him?"

I said "That is what the law requires you to do."

"But," he said, "suppose it goes off and kills the prisoner?" What am I guilty of?"

I said, "You are guilty of murder."

He said, "Where will I be tried?"

"Right over there in the courthouse."

He said, "I thought so."

As I said, even a rabbit will bite you if you hem him up long enough. That is one thing they have got to take into consideration.

Another thing they have got to take into consideration is what is going to happen in South Carolina, in my honest judgment, which I abhor. That is the fact that we once had in our Constitution a provision making it mandatory that the legislature provide public schools for every citizen of the State. They abolished that, so there is nothing in our Constitution that requires it.

It is left entirely up to the legislature, at the discretion of the legislature.

Now what is going to happen is this?

We are not going around with any plan about subsidizing private schools with public funds, because they are going to knock that right out. You are going to drive us into church schools or parochial schools, your Baptists, your Methodists, whatever you have, so that the people can contribute to it and deduct it from their income taxes, or else you are going to have purely private schools that only the wealthy can attend, and perhaps we will end up with nothing but private schools.

I will say this, Mr. Chairman. If you had had that when you were growing up as a boy, you would not be here today. That is the reason I abhor it. That is the reason that Thomas Jefferson was so much in favor of public schools.

But if it comes to a question as between the two, as to integration or private schools or church schools, then I think I know your answer to the problem, and I think I can speak for the little group in my State. They are simply not going to stand for it.

The trouble that the Federal Government will have in South Carolina will be nothing more than a little grain of sand on Caesar's head up at Caesar's Mountain, in South Carolina, comparatively speaking.

And what are they attempting to do?

They have their criminal statutes, and they have been tried. But they do not trust a South Carolina jury not only in the State courts, they don't trust the jurors drawn in the Federal court, which we often refer to as much higher type men. They are selected. They want to go now to one judge—and mind you, it may not be a judge from South Carolina, it might not be a judge from North Carolina. It may be a judge from New Jersey or it may be a judge from New York that they send down there to hold special terms of court, which they have done recently, to be assigned down there, to give him the power that the King of England was once denied, and no person has had the power since.

Give the Attorney General the power to go and bring an injunctive proceeding and put a man in a common jail. At least they can't make you work on the chain gang as I understand it for contempt of court, but the jail is just the same and the fine is just as hard to pay, whether you try it on the criminal side or whether you try it before a judge without a jury.

And not only where you commit an act in direct violation of a court's order directed to you, but where you even go along the street and think about doing something or are about to do something. They have that right.

And then they can punish you for contempt of court when you are never a party to a suit, and anybody knows that an injunctive proceeding, with the exception of those committed in the presence of the court, to which Senator Talmadge so aptly refers in his statement, an injunctive proceeding when brought is a very summary proceeding, it is a drastic proceeding.

It is about as drastic a proceeding as is possible under our system of jurisprudence. They don't even have to serve it on him personally, as I read the statute, the proposed statute, whereas now, if you enjoin a man, you have to actually serve it on him personally.

It is not summons and complaint; it is not summons for relief. It is like an arrest warrant. That is what it is. And you have to actually go and serve it on the man personally. You cannot leave it at his house as it is now. You cannot go leave it at his place of business with a responsible person and then consider him served. It just can't be done.

But they want to give him that power, almost an unlimited power.

Now with reference to their civil suits that they have, they can bring it, the Attorney General under these bills can bring it without even the permission of the plaintiff, if he sits up here in Washington and gets it in his head as a good idea for either party, and I say for both parties, if it is a good idea for him politically, they are going to do it not only here but elsewhere too.

If it is a good idea, he can bring a proceeding, that is when your suit is against the State, and place the burden on the defendant to prove that he is not at fault. That is what your statute says.

Why in a criminal case, the State has to prove it beyond a reasonable doubt. That is even so in our Federal courts, although they generously ignore it. You have to prove it beyond a reasonable doubt. The Government has to do it or the State has to do it. And in a civil action they must prove it at least by the preponderance of the evidence.

But now they have it so that the defendant must prove it, prove that he was without fault in allowing this colored person or white person—the same principle applies to everybody—that when he proves by the preponderance of the evidence that he used all due diligence in order to protect him, it is a good affirmative defense.

And if it is an affirmative defense the burden of proof is on him. Not only does he have to prove it, he has to allege it in his answer to the Government's suit against him.

The whole thing, as I see it, and as people whom I have talked to, and I have talked to a number of them, is just going to result in things that we are all going to regret, not in any community in which it happens, because I will state to this committee now that we are a pretty close-knit sort of a family in South Carolina. We have our great differences and we fuss among ourselves, but when it comes down to it and we object to all these things, when it comes down to it we are almost like one family.

We are like a big family. We hate what somebody has done, but when it is done, we all stick together, and you cannot put all the people in the penitentiary. Therefore, it seems to me that what they are doing or attempting to do by this in the first instance is to accomplish their political goal, if they want it, and to use it as an advantage so that the right—they call it a civil-rights bill. The only thing correct about that, it is a bill, a proposed bill, because there is nothing civil about it that I have been able to find out in my reading of it.

Perhaps they could tell you. That is one reason that I am so disappointed that those on this committee, and particularly some on the Judiciary Committee, as a whole are not here today to ask questions that they would like to hear answers to, which I assume that they did not care to ask and did not want to hear what we had to say, aside from the fact that they are sitting up there approving another judge—and that is what they are going to do—on the Supreme Court.

There is one thing about him, if he is a white man and he has got a license to practice law, we can't do any worse than what we have got now.

Thank you very much, Mr. Chairman.

Senator JOHNSTON. Thank you very much.

I would like to say that on this subcommittee Senator Ervin or myself have been present at every meeting that we have had. We have always arranged it so that one of us would be present.

Mr. WOFFORD. I am quite sure because you were delighted to hear their position as well as you were to hear any, Senator Johnston.

Senator JOHNSTON. Certainly. I notice we have here some on the list representing the Governor and the Legislature of South Carolina.

First on that list is the Honorable Dan R. McLeod, Assistant Attorney General.

STATEMENT OF HON. DAN R. McLEOD, ASSISTANT ATTORNEY GENERAL OF SOUTH CAROLINA

Mr. MCLEOD. Mr. Chairman and gentlemen of the committee, I am privileged to appear here and I am grateful for the opportunity to appear here before this committee to express the views that I feel in the matters relating to the civil rights bill now pending before this committee.

I feel, Mr. Chairman, extremely strong about these matters. I have pronounced views about them, but I try as well as I can to view the matter as dispassionately and as analytically as I can, Mr. Chairman.

I think it was Justice Holmes who said that Southerners have the trait of perhaps allowing their emotions to overcome their reason. I try to avoid that.

I say to you, Mr. Chairman, and I feel the thinking Members of the Congress realize, that the Southern people and the people of the United States at large cannot be condemned, if they do tend to get excited about the possible enactment into law about these matters, these so-called civil rights bills.

I speak, Mr. Chairman, not solely as a South Carolinian. I do not speak solely as a resident of the Southern part of the United States, but I speak as an American citizen, as an American citizen with two preschool age children, as an American citizen with 5 years wartime service record.

I am, Mr. Chairman, deeply concerned about the potential dangers, the potential disintegration of the sovereignty of the States of the Union as a result of the enactment into law of these civil-rights bills.

I feel that I am not speaking without authority, Mr. Chairman, because the United States Supreme Court in recent months has handed down a decision, the Steve Nelson decision, Pensnylvania against Nelson, and in that decision the field of sedition was held to have been preempted by the Federal Government by reason of the fact of the enactment of various sedition acts, to the exclusion of any effort by any State to enact antisedition laws.

So I say, Mr. Chairman, in view of that, it may be forcefully and plausibly argued that with the adoption of statutes such as are under consideration before this committee, it may well be argued that the Federal Government has preempted the field of every single subject

matter of every one of these bills to the exclusion of any action by any State of the Union, so I feel that my fears, Mr. Chairman, are not groundless.

Most of the civil rights legislation——

Senator JOHNSTON. When the Federal Government comes in, won't there be a tendency in the State to let down and not enforce even some of the laws that they have on the statute books now?

Mr. MCLEOD. I think you are profoundly correct, Mr. Chairman, I think you are profoundly correct. They will. The reaction, I fear, would be not the preservation and enforcement of constitutional rights of all citizens, but rather the enactment of these laws would detrimentally affect those rights that are now adequate and properly secured by the various States, and I speak of my own knowledge.

Senator JOHNSTON. Didn't we find a little bit of that when we had the prohibition laws?

Mr. MCLEOD. There is quite an analogy there, Mr. Chairman.

Senator JOHNSTON. How much they enforced from the Federal standpoint, the tendency of the States to let down at that time really brought on an evil, so to speak.

Mr. MCLEOD. Exactly.

Mr. Chairman, I am not going to be repetitious to the extent that I can avoid repetition, but I feel that there are some features in these acts that I want to particularly call the committee's attention to, some features that are particularly obnoxious, some features that I think are particularly, apparently on the face of it, in the teeth of the Constitution itself.

Most of the subject matters covered by all of the bills is included in the Omnibus Human Rights Act of 1957, Senate bill No. 510.

You will note, Mr. Chairman, and I feel that your attention has undoubtedly already been called to it many times, that the powers given the Civil Service Commission that is created under the terms of this bill is to what?

To appraise the activities of private individuals and political subdivisions and private groups of individuals to determine whether or not the activities of my neighbor, my activities, my group, would constitute something that might adversely affect civil rights.

That smacks to me, Mr. Chairman, of thought control, Gestapo tactics. It can be perverted and subverted into an instrument of harassment, an instrument of a most dangerous character and nature.

The provision in the bill with respect to the power of the committee to accept the service of volunteers is particularly a dangerous precendent.

Any stargazer, any zealot, any fanatic with some obsession—sometimes they may be meritorious, more often they will not be meritorious—could inveigle his way into the good graces of this so-called Civil Rights Commission, ingratiate himself with the members of the Commission, and be empowered as fully, with all the power and authority as fully as any other employee in the Commission, to go out, roam the countryside and appraise my activities to determine whether or not I may have adversely affected somebody's civil rights.

I say, Mr. Chairman, that is not my concept, and I do not believe it is the concept of the majority of American citizens, plain, ordinary citizens, the majority of American lawyers, or the majority of American courts.

I don't think it is in accord with their concept of the American system of government.

Another feature of that act that I find of particular concern is this: these voluntary workers, these paid employes of the Commission are authorized and empowered with subpenas that can be directed to any Territory of the United States, any State of the United States directing any person so subpenaed to appear anywhere in the United States to be interrogated.

Now what are they going to interrogate him on?

They are going to appraise their activities with a view to how those activities might affect civil rights, and the danger is this that I am referring to, Mr. Chairman; the danger is that there is no limitation as to the scope of the investigation that might be made by them, for this reason: Nobody knows what constitutes civil rights.

The Chairman, I am sure, is fully aware of the decisions of the State courts and the Federal courts construing the meaning of the phrase "civil rights."

In Georgia the Georgia Supreme Court has construed that phrase. They have civil rights in Georgia, and they have construed that phrase to include the right to drive an automobile on the highways of the State.

In Ohio it has been construed to mean the right to obtain a free education, and in one of the Midwestern States, Iowa, I believe, it has been construed to mean the right to distribute handbills containing advertising matter, and in still another State it has been construed to mean the right of second-grade students to participate in a football game.

Those are cases from the State and Federal courts obtained at random glances, Mr. Chairman. What scope of limitation can be placed upon a broad authority to investigate civil rigths?

How far will any volunteer or any paid worker be able to go with what he or the Civil Rights Commission determines shall constitute civil rights?

There is no limitation, Mr. Chairman, and I say it is a dangerous, a fearful proposal.

Senator JOHNSTON. In other words, there is no definition in the bill at all?

Mr. MCLEOD. There is not, Mr. Chairman. There is in one of the amendments, they have set forth in broadest terms some meaning without limitation of civil rights.

That is included in this general omnibus act, but it is not a part of the portion that relates to the Civil Rights Commission or whatever it is termed.

There is no definition. There is no limitation as to how far they can go or who they can investigate.

Mr. Chairman, I refer to title VIII of the Omnibus Act which provides for the creation of a Federal Equality of Employment Act. That Mr. Chairman, is nothing more nor less than the Fair Employment Practices Commission bill under another name.

I object to that Mr. Chairman, not because I begrudge anyone in the whole United States the right to earn a living. They are entitled to that. But I say it is against my concept of freedom and liberty. It is against my concept of the principal of free enterprise that has existed in this country and has made it great, to hamstring and

subject an employer to governmental surveillance, merely because he wants to employ somebody or does not want to employ somebody.

I am sure the Chairman is well aware of the fact that not only do employers these days consider the technical qualifications of a man but they consider many other intangible factors, his habits, his appearance, temperament, his social background, his social activities, matters that his employer himself may not be fully aware of, but for some reason he takes an instinctive liking or dislike to a man looking for a job, and rather than help the adoption of this bill into law will hinder minority groups or majority groups in obtaining employment.

Mr. Chairman, I say that for this reason: I think I can illustrate it with a personal matter that has come to my attention in the past few months.

One of my colleagues was employed by a national concern. He made an application for the job. He went over to a neighboring State and was interviewed. They found his technical qualifications all right. He submitted samples of his handiwork. They said it was adequate. They discussed salary. They struck a bargain with respect to salary. He was introduced to his prospective coemployees. He was introduced to the various officials of the concern. He was shown the working conditions, the working places. Everything was acceptable but they had one final hurdle to overcome. They told him, "We want you to bring your wife over here, we want to meet her."

I use that illustration, Mr. Chairman, because it points out the fact that an employer is looking for many, many factors in the consideration of whether he is going to hire a man or not. He does not want a man with a neurotic wife. He does not want a man with an antisocial family. And yet he does not want to face that man with any accusation. He does not want to be subjected to the humiliation and embarrassment. There may be something that the employer himself is not fully aware of when he rejects him, as I have just stated. But under this bill, if some disgruntled applicant for a job takes a notion, he can make a sworn affidavit, a cease and desist order can be issued against that employer.

He will be haled into court, interrogated at length, and required to hire somebody that he did not, for reasons of his own, want to hire. He is not only required to hire him but to pay him back wages that have accrued in the interim.

Now that is on the sworn affidavit, Mr. Chairman, of some person who could put the wheels of this commission into motion.

I want to cite the Steve Nelson case again to your Honor, because I think it is an unusual decision. I want to cite to the Chairman what the Supreme Court of the United States, speaking through the Chief Justice, had to say about the very thing that is provided for in this Equality of Opportunity Act.

They provide in here that upon the sworn statement, whenever a sworn, written charge has been filed by or on behalf of any person claiming to be aggrieved, the committee goes into action.

Now here is what Chief Justice Warren said:

> The indictment for sedition under the Pennsylvania statute can be initiated upon information made by a private individual. The opportunity thus present for the indulgence of personal spite and hatred or for furthering some selfish advantage need only be mentioned to be appreciated.

The very matter that is in this bill has in the last 6 months been condemned in a decision by the Supreme Court of the United States.

Mr. Chairman, the other portion that I wish to refer to with respect to this Omnibus Act is title 9, the Federal antilynching law, and I concur wholeheartedly in what my esteemed and able friend has so well presented here with respect to the lynching problem in South Carolina.

I say to you, Mr. Chairman, what I feel you already know, and that statistics by any authority, including the national association or including any other fact-gathering authority, will prove that lynching is nonexistent in the State of South Carolina today, that lynching has been negligible in the decade from 1945 to 1954 when all the records, as far as I am able to ascertain, show that only 16 persons were lynched in the United States.

Lynching, Mr. Chairman, as any right-thinking witness who testifies before this committee, will state is something that no right-thinking person condones.

But lynching, Mr. Chairman, is not a problem in South Carolina. The last lynching of which I have knowledge took place in 1945 or thereabouts, and as Senator Wofford said, recovery for damages against the county has been made in that case.

The only question was which county was liable.

It has been made in many other cases in South Carolina. The recovery of damages of course I feel is relatively unimportant. The more important matter is that lynching itself or attempted lynching has been abolished.

Senator JOHNSTON. In other words, your position is when the states are handling that matter, you don't want the Federal Government coming along.

Mr. MCLEOD. I think that is correct, sir. I feel that the cold statistics illustrate that. We have antilynching statutes in South Carolina that are effective. There are cases shown in the books.

We not only have statutes, Mr. Chairman, but we have it written into our constitution adopted in 1895, and it has been effective.

There is one phase of this Antilynching Act that I think is worthy of calling to the committee's attention, and that is the fact that it would give the Federal Government the right, if it so chose, to intrude itself in nearly any case involving two or more persons doing violence to another.

The chairman well knows that every court of general sessions in South Carolina will be filled up with cases involving potential lynching as defined under this act.

You and I know, and I feel it is well-known throughout any other State and obviously that the crimes that are tried there are the ordinary, run-of-the-mill crimes, murders, rape, arson, assault and battery and all the various degrees of those offenses.

Yet if any member of this Commission authorized to enforce this proposed law chose to, they could intrude themselves in ordinary cases of that nature, ordinary criminal cases, determine that they were lynchings, and place into effect the provisions of this act.

I feel it is unconstitutional, Mr. Chairman. I feel that there is no doubt but what the portion of it that permits the recovery against the State is flagrantly unconstitutional.

There is no authority, no authority of which I am aware, by which the Federal Government can authorize a tort action by an individual against a state or a political subdivision of that State. That is a matter that the States themselves can do.

In South Carolina we have done it. The Federal Government is powerless to say that any individual can sue the State of South Carolina for tort.

Mr. Chairman, as I said and as I am sure would be repeatedly said, we feel that this legislation is unnecessary. It is unwarranted, it is unjustified, and to my certain knowledge it is not demanded, certainly not in the State of South Carolina.

I feel that that is true of the other parts of the United States. If the committee will bear with me, I want to quote just two short paragraphs from a speech made by Senator Borah in 1938. He said this:

> It is not in the interest of national unity to stir old envies, to arouse old fears, to lacerate old wounds, to again after all these years brand the southern people as incapable or unwilling to deal with the question of human life. This bill is not in the interest of that good feeling between the two races so essential to the welfare of the colored people. Nations are not held together merely by constitution and laws. They are held together by mutual respect, by mutual confidence, by toleration for conditions in different parts of the country, by confidence that the people in the different parts of the country will solve their problems.

And that is just as essential today as it was in 1865 or in 1870 when the original civil-rights bills were enacted by the Congress here.

The only other matter that I wish to call the committee's attention to if I may, is what has already been touched upon by Senator Wofford. That is the fact that the adoption of these bills, Mr. Chairman, I fear will do this: create a government by injunction. That is to be avoided at all costs.

The injunctive process can be abused. The injunctive process, as Senator Wofford said, is an extraordinary legal remedy that ought not to be lightly regarded.

The effect of the injunctive mandatory and declaratory right granted by each and every one of these bills that I have observed will be to destroy the right of trial by jury, not only to destroy the right of being convicted by proof barred as Senator Wofford said, but to destroy the presumption of innocence that comes in under our common law and constitution with every defendant.

I feel in the face of these bills that point alone is sufficient to render them unconstitutional.

Heretofore as I understand the law, any person who violates an injunction, which violation is at the same time a violation of a law of the United States, is entitled to a trial by jury, and these bills do not grant that right.

I fear, Mr. Chairman, that the reaction to these bills will be one of resentment and apprehension, to say the very least.

I say that because there is implied in these bills, you cannot read these bills without seeing the implication clearly there, implying that the people of South Carolina, the people of Minnesota, the people of the other States of the Union are not competent to protect human life within their respective borders.

That feeling of resentment will, as the chairman aptly pointed out a moment ago, result not in the preservation of civil rights but in the destruction of civil rights.

Senator JOHNSTON. Isn't it also a strange thing to hear that in this field they are trying to give, as they say, some liberties and rights to individuals, who will be taking away the rights and liberties of others?

Mr. MCLEOD. I think that is a very pertinent remark, and I think it is obvious, Mr. Chairman, very obvious.

So, Mr. Chairman, there is a spirit of tranquillity in the State of South Carolina. I know of no lynchings, I know of no attempted lynchings. I know of no denial of the right to vote. I know of no imtimidation of anyone who wanted to vote the way he chose. I know of no appeal from any denial of a right to vote.

It is provided for in the constitution and statutes of South Carolina. I know of no action that has ever been brought with respect to the intimidation of anyone in the exercise of his right of suffrage. But if this legislation is enacted I feel, Mr. Chairman, that besides having the result that I mentioned a moment ago, there is a potential danger. There is the opening wedge towards the creation of a police state. There would be chaos, there may be violence. There will, I know, be a period of uncertainty certainly during the generation when my young children are growing up.

There will be a period of apprehension and fear, a period of hatred. That may pass but, Mr. Chairman, the thing that I fear more than that, and the thing that will not pass for generations is the permanent scars, the permanent wounds that will be made between two races that are living amicably and peacefully together now.

There is something more than that I fear also, and it may strike me because of my peculiar situation as a father, and that is that I fear what I think would be the worst thing that could happen in the American Government in our present-day history, that the enactment into law of these bills could very well cause the lamp of free, public education to flicker out and die.

Mr. Chairman, I am deeply grateful for the opportunity to appear here before the committee, and I urge that the committee report unfavorably and disapprove the enactment into law of the bills now pending before it.

Thank you.

Senator JOHNSTON. We certainly appreciate your coming up here and giving us your thought on the matter.

If you have anything else that you want to leave with the committee we will be glad to receive it.

Mr. MCLEOD. I will submit a statement that I have prepared.

Senator JOHNSTON. We also have here today Clint T. Graydon.

STATEMENT OF CLINT T. GRAYDON, ATTORNEY AT LAW

Mr. GRAYDON. Mr. Chairman, may I make an inquiry?

The gentleman on the right has just come in. I would like to know who he is.

Senator JOHNSTON. He is a staff member.

Mr. GRAYDON. Mr. Chairman, I will stand when I am talking for the reason that I can talk better. I can't talk very well either way but I can do better standing.

Senator JOHNSTON. You may sit or stand or run as you please.

Mr. GRAYDON. I am not going to run, Mr. Chairman.

As I came into the elevator I said to one of my friends in a facetious fashion, "Did you leave your pistol with Senator Johnston?"

I came in, found officers all over the place. I think they thought I was forearmed instead of forewarned. I think for the purposes of the record I should tell who I am. I am an expresident of the South Carolina Bar Association, expresident of the Richland County Bar Association. I am an exteacher, an exfootball coach, an exnewspaper man, and exjudge of the supreme court and the circuit court.

You will notice all those are "ex's."

I am a Democrat by persuasion. I am an Episcopalian by choice.

I am a notary public without a seal. I think that gives you pretty full knowledge. I will have to explain to you why I am a Democrat. I am a Democrat because I believe in their principles. I don't like all Democrats. Some of them irritate me.

I am an Episcopalian because I think it is the mildest form of religion. It keeps you from catching the real thing, like vaccination and smallpox. But I think that I have lived in South Carolina long enough to know what is happening down here. I want to say that my old great-grandfather, that the person who is reputed to be my great-grandfather,—I hope he was—went into our public library down there and told the librarian, who by the way is a great niece of Wade Hampton, that they wanted to take all the books out of the library that had the word "Negro" in it and Miss Lucy said "Why, I am sorry but I can't do that," and he said, "Well, it is offensive."

Miss Lucy said, "Well, there is about 5,000 books in here that have got the word "bastard" in them, do you want those out?" He said "We don't care, they are not organized so it don't make any difference."

We are appearing against an organized effort to invade our way of life, to invade our civilization.

This old great-grandfather of mine was against slavery and he emancipated the slaves and my grandfather emancipated his slaves.

They lost a lot of money doing it but I think they did right, and I feel that we found out that slavery was wrong, and we took an awful licking about slavery, but it was wrong, and I am glad it was abolished.

Now the next thing I want to call your attention to is we are not up here asking you for any help. We are like the man that went down the mountain trail and a bear got in his way, and the man began to pray and said "Lord, help me whip this bear."

The bear kept on coming and he said "Lord, don't you hear me? Help me whip this bear."

The bear kept on coming and the fellow got more and more excited. He said "Lord, if you can't help me, for God's sake, don't help that bear."

So we just ask you for God's sake don't help the bear. Just let us alone.

Now I want to say that some of you men called me at the last hearing Santa Claus. That sank deep into my soul, and I am Santa Claus. I am bringing you back today the Constitution of the United States which you seem to have lost. I am bringing you back the Magna Carta which was granted by King John, which you seem to have forgotten.

I am bringing you back the principle that the individual people in the States on the low level of government have a right to manage their own affairs.

Call it States rights if you please, call it whatever you want, but it is a fundamental principle of this Government, and I cite you some instances.

In the Magna Carta they say that the borrowers and the poor shall have the right to govern themselves according to their usual laws, customs and usages. The English people, the Anglo-Saxons, fought for that principle.

I come back with the Constitution and give it back to you, a Christmas gift if you please, and say to you that that Constitution guaranteed us ten fundamental rights in the Bill of Rights.

Now we have the Supreme Court of the United States, every time they want to upset one of those rights they say we appeal to the Fourteenth Amendment.

We say is the Fourteenth Amendment going to swallow up the other ten amendments?

Are we to say it is going to be unlimited?

I think that is abused. The Declaration says we are entitled to life, liberty and the pursuit of happiness. They have circumscribed life. They have taken liberty away from us. Happiness is destroyed.

The only thing we have left is pursuit. As long as we have got the pursuit I am going to be here pursuing it.

Don't worry about that. Let's see what the fundamentals of this are. Of course you know and I know that in the original concept of this Government the convention decided 11 times not to give the Supreme Court the right to declare an act unconstitutional.

Yet when the Government was formed, Mr. Marshall, who did a great job in a great many respects, he took it unto himself to declare it unconstitutional, and that is firmly imbedded in our Constitution and our laws today.

I want to say to you, though, there is no place in any history where the Colonies gave the right to the United States to declare an act of the State court to be unconstitutional. You will not find that anywhere.

I was very much amused at my friend Tom Wofford, who I love very much, saying that all you have to do is to have a law license and you could be a member of the Supreme Court. Why, Mr. Wofford does not realize it is not an essential qualification of a judge that he be a lawyer. I challenge you to find it.

The President of the United States could—I do not say he would—appoint a shoemaker, a cobbler, or horse rider if he wanted to. And I challenge any of you to find where there is any provision that a man has to be a lawyer to be a justice of the United States Supreme Court.

Of course, I admit that they generally are lawyers. I also admit, that sometimes we doubt their learnedness in the law.

I want to call your attention to one vital factor that has not been touched upon by anyone. The law enforcement in our State is a cooperative measure between the State law enforcement officers, the county law enforcement officers and the Federal law enforcement officers. The FBI relies heavily upon the State law enforcement division. I want to know what is going to happen when these local

law enforcement officers realize that those same Federal officers have the right, under this act, any time they are dissatisfied, to bring the State officer into a Federal court and charge him with violation of civil rights.

It is going to tear the law enforcement to pieces in our State, I think. It is going to have a material effect upon that great community of interest and cooperativeness of spirit which has grown up between the State and Federal offices.

Now, I want to say to you further that this bill provides, the one I have been reading—there are so many of them, I have not read them all—that there should be a commission appointed, consisting of not more than three members from any one party. It does not say what party: Democratic, Republican, Communist, American Labor Party, Social Party, or it may be the cocktail party for all I know. It does not say what it is, it just says from any one party.

How is that going to be allocated? I do not know. It does not say, it leaves it up in the air.

Now, I want to say to you gentlemen here now—I wish some of the Republican members were here because I would like to tell them this one time in my life—I do not have to defend myself against communism. They are the ones that got the Communists with them—not with me thank God.

And as I view the history of the world, the first thing a dictator does, or tries to do, is to obtain the sanctions of the court, control over the courts. And as soon as he does that, liberty is gone. That is what I am objecting to in this bill. It is an attempt to place in the hands of a few people the machinery, the court, pressed with a seeming legality that will gradually take away the rights of the people.

I want to say to you that they talk about lynching. We have not had a lynching in 10 years. Oh, they talk about the Till case; and yet, when I picked up the paper the other day, I read that on the streets of Boston some man insulted a woman and they stomped him to death right on the street.

I do not charge the colored race with that, I charge that up in Boston, just like in Mississippi, there are people who are unmindful of the restraints of law. That is everywhere, gentlemen.

Senator JOHNSTON. You did not see that on the front page of all the papers, did you?

Mr. GRAYDON. No, sir; I saw it in a little tiny article at the bottom of a paragraph on the want ad page in the New York Times. I think that is right. It was just a little tiny piece.

Senator JOHNSTON. You probably will not see it in magazine articles, anything written about it in magazine articles, either.

Mr. GRAYDON. No, sir; they do not want that kind of publicity, they do not care about it.

I do not hear much about those people in Detroit. That could never happen in my State, where we could stone and rock people who bought a house.

Yet, gentlemen, it apparently goes on everywhere. But every time it occurs in South Carolina or Mississippi, it is blazing in the headlines. And, of course, up here you do not hear a word about it.

We have not had a lynching in 10 years, and I hope we will never have another one. I think it is a very bad thing for the law to be taken in the hands of a crowd of aroused people.

I also hear talk about integration. Well we started running airplanes down there and there has been no rule about integration in airplanes, and yet there are no separate facilities there. People travel on the planes and there is no comment about it. There is no violence or attempt of violence that I have ever heard of.

And in the city of Columbia, where I live, the colored people came and said, "We want to use the public library." They had a division out in their section which they were using. Miss Bostick said, "You have a perfect right to use it; there are no restrictions; there is nothing that will be done if you come day or night; you will be allowed to see and use every facility." She tells me less than a week ago that the number of people who come in that place are fewer now than they were before that thing was issued.

We have a combination now of colored and white working together. The best fish market in our town has colored help and white help, both working in there and waiting on customers. We have no trouble about that. The thing is gradually adjusting itself and will continue to adjust itself if we just are left alone.

Another thing we talk about is voting. The voting facilities in South Carolina are the broadest in the United States. You do not have to pay a poll tax, you do not have to have any property, you do not have to have anything but simply present yourself to the voting registry where you are registered, if you are qualified.

There is a provision in there that says you must be able to interpret the Constitution. But, of course, gentlemen, the boards are not able to interpret it, and they cannot put that question because they are not any more able to do it than the others.

I have never heard of one person denied the right to register because of that clause in there about the Constitution.

I want to say to you further that our statute says that all people can vote who have been residents of the State for 2 years, the county for 1 year, and the precinct for 6 months, except persons committing certain crimes and idiots. That word is in there. I want to say that we are so liberal down there that we do not even try to keep idiots from voting. I think about 20,000 of them vote every year. And in the last election, in my county—I can only speak for my county—there was 1 box in my county that voted 1,400 votes of which 1,310 of them were colored people. And they voted all over my county.

They have a material effect on the election in my county, and no one has ever tried to prevent them from voting and I do not think they ever will.

Senator JOHNSTON. Speaking of the Indians——

Mr. GRAYDON. I am coming to the Indians. I have not come to them yet, but I am going to tell you about the Indians because I think that is very amusing.

You know, we first stole this country from the Indians. Everybody admits that. We just took it away from them and we pushed them back, and as we needed the land we kept on pushing them back and finally, we pushed them back on the badlands to the West.

Then they discovered oil out there, and we just took it back away from the Indians again. We said, "You ain't entitled to it." We have them herded on reservations. They are filthy, they are dirty, they are uneducated, they have no medical support, no medical doctors. In

certain places they cannot go into a white barroom, they cannot go into white places of amusement, they cannot go to white schools.

Why don't we do something for these people from whom we stole the country? It seems to me they ought to be entitled to a little consideration. They are not just wolves and outlaws.

The reason we do not do anything about it, gentlemen—it is a great travesty on our Government—is the fact that they are not organized, they do not vote. If they would get about 500,000 votes lined up, you would see somebody get in behind them.

I saw the other day, where in Utah they had established schools which the State refused to support, and the Government did support. And they have Indian schools now right by the white schools, paid for by the United States Government, over in Utah. I think that is a good thing, I do not think there is anything wrong with it. I think we are entitled to give them something, entitled to help them.

But why are we making all this hobob when we are leaving them over there with nothing, not a thing in the world. I think it is something for us to think a little about, whether or not they are entitled to some rights somewhere, and get down to the basis of what we are trying to do to others.

Let's go a little further. The Supreme Court of the United States, for which I have great respect—I am certainly not fool enough to stand up here and abuse the Supreme Court, because I think they are honest and try to do what is right. However, a person who does not understand the situation is just as dangerous in a situation as a person who is dishonest about the situation. I would just as soon be shot by an outlaw as a fool, because either way you are going to be dead and they cannot get you back, you know. And I say, the trouble is that a great many people who are dealing with these problems know nothing in the world about them. They are not trying to learn anything about them, they do not want to learn anything.

But when you see the United States Supreme Court, and I say this in all humility and with apology, 2 years ago saying that baseball is not covered by the interstate-commerce law, and then last week say football is covered—I just cannot understand that. The games are exactly the same. One is played by 9 and the other by 11; one uses a horsehide and the other uses a pigskin. That is the only difference I know.

Yet, the Supreme Court of the United States has said that baseball is covered and football is not covered.

Can any of you gentlemen suggest a real, logical distinction between those two sports? I cannot. I have thought about it and I cannot. Of course, I expect that when they finally get to the ultimate of it they will say, "Well, of course, baseball is included, too."

I want to refer to a point there that I think is very important. We are living by a case called *Plessy* v. *Ferguson* as passed in 1896 where the Supreme Court of the United States said that wherever you gave people of different races equal facilities, equal facilities separate, that that was sufficient to carry out the Constitution. For fifty-odd years we lived under that decision, and when our distinguished Gov. Jim Byrnes was elected, he came in and said: "Yes—all facilities are not equal, we have got to make them equal." And in 1952, before he was in office 6 months, or 6 weeks, he instituted a program with 3 percent tax on sales and used that money entirely for schools.

And on the basis of *Plessy* v. *Ferguson* which we thought was the law of this country, and which we are acting upon, we spent $175 million in trying, in great part, to equalize our schools.

Shall that be taken away from us, destroyed, when we acted in good faith on a decision of the United States Supreme Court, which has been in existence for over 50 years? I think that is not dishonest, but I certainly do not think it is quite fair to require us, or put us into, spending enormous sums of money, and then as soon as we get the program started say, "Well, you just did wrong, we are going to change the law." That is what they did to us. And we are still spending that money.

Senator JOHNSTON. In the Supreme Court, that is, a Supreme Court consisting of nine members, follow that line of decision for 50 years, isn't that right?

Mr. GRAYDON. Yes, sir. Oh, I could name, if I was a good lawyer, which I am not, 25 decisions which have followed *Plessy* v. *Ferguson* and have said that was the law of the land. And none of them have been overruled, because it did not say they were overruled, they just said the law was different. That is about what they did to us.

Senator JOHNSTON. You have acted on our supreme court in South Carolina, didn't you act on there, following the decisions and the precedent of the court?

Mr. GRAYDON. The rule, Senator, is so well imbedded in our law in South Carolina, that I believe any judge who would deviate from that rule would be immediately taken up by the public opinion to try to right the situation.

Of course, we change decisions sometimes, but, what I mean is, we followed the precedent. That document, stare decisis was laid down by Mr. Marshall. John Marshall said in his decision that as long as the doctrine is on the books, it must be followed unless there is some compelling reason not to follow it. That is the doctrine as I understand stare decisis action.

And as I understand Mr. Marshall held that.

Now, there is one other little thing that I want to say—and I do not know what you people will think about it—but my two great heroes in the Government of this country are Thomas Jefferson and Abraham Lincoln. I know that sounds funny from a man from the Deep South, because in my household the name "Lincoln" was not allowed to be mentioned until I was at least 15 years old.

But I found out that Lincoln was a great man, and I want to quote just briefly from Mr. Lincoln.

When Mr. Lincoln was in his debates with Douglas, he said in effect: I am not in favor of extending the doctrine of slavery.

He said further: "The fact that I am not in favor of extending it does not mean that I believe that the colored race should be given full equal rights in politics and social matters, but I do not think that we have the right to make them not live by the sweat they earn their bread by."

Mr. Lincoln repeatedly denied that he was in favor of equalization. He was in favor of emancipation, so he said.

And I want to call your attention to this. Always, when I read the proclamation, I figure I am reading Punch magazine in London because Mr. Lincoln's Emancipation Proclamation did not emancipate one single solitary slave. He said: "All slaves in rebellious States are

hereby declared emancipated." They did not emancipate a soul in Delaware, a soul in Rhode Island, a soul in Maryland, but they emancipated people in the rebellious States.

And I want to say to you that if Mr. Lincoln had lived, I do not think we would have suffered as much as we did. He was killed by a half-crazed outlaw maniac, a man who was not restrained, and a man who was an actor, histrionic fool. I think it was a very unfortunate thing for the South.

But I want to call your attention to the fact that they put those laws on us, what we call reconstruction laws. They were never able to enforce them in South Carolina. I want to call your attention to the fact that they put the prohibition laws on, but they could not enforce that. And, gentlemen, you are not going to be able to enforce this.

Now, I have talked a lot about general things. I am here as a witness, not as a lawyer, but I want to make one observation further.

Government by injunction is a most dangerous form of government in the world. It deprives of a man the right to be tried by a grand jury and tried by a petty jury. This act enables the Attorney General of the United States, in the name of an undisclosed party, without his consent, to bring an action against a person to protect his civil rights. That is not all. It says the cost of the proceeding for the plaintiff shall be borne by whom? By the United States. That is a deviation from all the law I have ever heard of, that the person who presents himself, who prosecutes an action, has someone behind him to pay the cost. It is going to be a whip in the hand of these people who want to punish someone, and it is not going to do any good for the country.

I want to make one final statement, and I hope you all will understand that I am not up here in anger, I am not up here in petulance, I am not up here in prejudice, I hope, but I am here trying to show you that we are trying to do something and are doing something and gladly will do something, and as the race attains its position economically and socially, it will rise and rise rapidly as it has done in many years past.

But I want to say to you, when you start putting in injunctions, as Mr. Wofford so well says, an injunction that you can put a man in jail who is not even a party to the proceeding, I do not know what is going to happen to the country then.

We have always said the rule that it is better for 99 innocents to escape than 1 to be convicted, 1 innocent to be convicted. That, of course, is not a good rule, it is just a saying. It has no basis in fact. But the genius of this country has been, up to now, the protection of the rights of the individual under that construction which Santa Claus brought you today, and I want it to continue that way.

I want us to continue to be able to protect ourselves under the Constitution and under the laws of this land. Another thing about this bill: Its injunctive feature is bad; lack of presentment by grand jury lack of trial by petty jury; no rules laid down as to the burden of proof, except, as I read the law, it is not up to the Government to prove its case, but it is up to the defendant to prove himself innocent by the greater weight of the evidence. That is the way I read the law, that is the general rule in civil cases. And I think it will be agreed that it has been the rule, ever since I have known the rule,

that if we get a man under an injunction, he has to get out from under it, and by some substantial evidence produced in the record.

Gentlemen, I do not know what is going to happen, nobody does, except I know this, that the relationship of the races in our State has deteriorated in the last three or four years markedly. I know that there is a feeling of fear, a sense of distrust, a question of inability to understand each other, which frightens me a great deal because I have always tried to be the friend of the colored people.

I want to say one other thing. In our courts the colored man gets a better shake than the white man. All judges, all the solicitors, try their best to see that he gets his rights. Of course, I admit there are miscarriages of justice. Every client I have ever had who was convicted was a miscarriage of justice, but I could not help that. [Laughter.]

Senator JOHNSTON. Off the record.

(Discussion off the record.)

Mr. GRAYDON. We had a case where the lawyer went into court without a necktie. He lost his case. The clerk said, "Look here, Jim, I think those judges did not like you not wearing a necktie."

He said, "What the devil did that have to do with the case?"

He said, "I just heard someone remark on it."

So he saw the justice a few days after and he said, "Bill, they tell me you decided that case against me because I did not have on a necktie."

He said, "That is foolishness, that is tommyrot, that had nothing to do with it."

He said, "Well, I am kind of disappointed. That was a damn sight better reason than you put in the opinion, I will tell you that."

Gentlemen, I say we are worried, we are frustrated, we are excited, we are in a shape where we do not know what we are going to do next. And I think that the idea of two great parties of this country—not including the cocktail party—are getting together and framing this up to have the minorities pulled in——

Senator ERVIN. Well, I think that if it were not for the political implications of these bills neither political party would be willing to be caught with one of them in its pocket down at the bottom of a coal mine at 12 o'clock midnight, during a total eclipse of the moon, while the United Mine Workers, under John L. Lewis, were on strike.

Mr. GRAYDON. I agree with you on that. But I say the whole thing is political. In fact, in the House committee, one of the members on the committee over there practically admitted that both parties, both of them, were trying to use it as a political lever.

I told them they ought to do something about the Indians. The poor old Indians, they are distraught, they have no clothes, they have no food, they have no education, they have no nothing and they are the people from whom we stole the country. Yet, we are doing nothing for them. Why? Because they cannot vote, or do not vote. That is the reason.

Senator ERVIN. I would like to ask you one or two questions.

Mr. GRAYDON. I would be glad to answer them if I can.

Senator ERVIN. I have known your reputation for a long time as a trial lawyer. I would like to ask you, as a result of your experience as a trial lawyer, whether or not you think there is any substitute what-

ever for the right of cross-examination when you are trying to search for truth in a court of law, or anywhere, for that matter?

Mr. GRAYDON. Judge, I am glad you asked me that question. I think cross-examination is the most powerful implement for truth in the world. I think if you are able to cross-examine a man you can get to the truth if you are given free right of cross-examination.

Senator ERVIN. I would like to ask you another question.

Under these bills providing for injunctive relief, a restraining order or a temporary injunction can be misused upon an affidavit. I want to ask you——

Mr. GRAYDON. Ex parte affidavit.

Senator ERVIN. Ex parte affidavit. I ask you if affidavits are not ordinarily drawn by partisan lawyers and if the use of an affidavit does not deprive the adverse party of his fundamental right to confront and cross-examine the witnesses against him?

Mr. GRAYDON. That is correct, sir.

Senator ERVIN. I will ask you further if you do not consider that affidavits are about the sorriest substitute that have ever been devised by law for a search for truth?

Mr. GRAYDON. I think it is the same thing that near beer was to real beer, it just ain't no beer at all. I think it is a poor substitute, and I think that anybody will admit that.

I want to say one other thing. I think the thing that ought to worry us a great deal is the attempt of this bill to step around a grand jury and the petit jury and attempt to make a man convicted on affidavit.

Senator ERVIN. I have one more question.

Mr. GRAYDON. Yes, sir.

Senator ERVIN. First, there are now, are there not, upon the Federal statute books sufficient laws to secure all civil rights of all Americans without any new laws?

Mr. GRAYDON. I think so, sir, more than ample.

Senator ERVIN. Now I, will ask you this, if under the existing Federal statute, any wrongful improvision of a person's right to vote is not a crime?

Mr. GRAYDON. It is a crime.

Senator ERVIN. And I will ask you this, if the Constitution of the United States does not secure each one of these rights to a person prosecuted for crime: first, the right not to be placed on trial until he is indicted by a grand jury?

Mr. GRAYDON. That is correct, sir.

Senator ERVIN. Second, the right not to be convicted or punished until he is found guilty by the unanimous verdict of a petit jury?

Mr. GRAYDON. And further, Judge——

Senator ERVIN. Just a minute.

Mr. GRAYDON. All right, sir.

Senator ERVIN. And third, the right to be represented by counsel who shall have a right to a reasonable opportunity to prepare his case; and fourth, the right to be confronted by and to cross-examine the witnesses against him?

Mr. GRAYDON. That is what I was going to say, that he has to have that.

Senator ERVIN. I will ask you if under this bill, S. 83, recommended by the Attorney General, the Attorney General would not be em-

powered to bypass and circumvent every one of those fundamental constitutional rights?

Mr. GRAYDON. In my judgment, that is the intent, purpose and operation of the bill.

Senator ERVIN. I would like to ask you this further question, if under the existing law where a suit is brought to collect damages for an alleged deprivation of a civil right, the defendant would have a right to trial by jury—would he not?

Mr. GRAYDON. Correct, sir.

Senator ERVIN. And I will ask you if, in your opinion, the Attorney General would not be granted by these bills the power to bring an equitable proceeding and recover incidental damages for the benefit of a private individual in a proceeding in which the defendant would be denied the right to have a petit jury pass upon the issues brought against him?

Mr. GRAYDON. That is my assumption.

Judge, I want to make one other observation about trial by affidavit.

Thirty-five years ago I had a case where I made an affidavit. I was very elated because I had a very prominent banker in town to make an affidavit in favor of my client.

I went into court very much puffed up about this good banker who had made this fine affidavit, and low and behold, the other side went, in return, to this banker and he made an affidavit in their favor. So I say affidavits are things that can be, no twisted, but shaded, you might say, by a lawyer in one way or another.

And another thing, you do not have any right to cross examine him about what he has said.

Senator JOHNSON. I can bet you that banker made that statement without telling any falsehoods, too?

Mr. GRAYDON. He did.

Senator JOHNSTON. In other words, he told the truth in both affidavits?

Mr. GRAYDON. That is correct.

Senator JOHNSTON. He left out of yours the things that were against you, and in the other affidavit he left out the things that were against them.

Mr. GRAYDON. That is exactly correct.

Senator ERVIN. We used to have, in my county, a surveyor who was somewhat like that. A party would bring a suit for an injunction, to restrain trespassing on land until the title could be adjudged in a trial of merits. The plaintiff would go to this old surveyor and get an affidavit to make out the plaintiff's case, and then the defendant would go and get an affidavit from him to make out a defense to the case stated in the other affidavit. This illustrates the point made.

Mr. GRAYDON. Yes.

Senator ERVIN. I want to ask you another question, about parts III and IV of S. 83, the bill recommended by the Attorney General, which contains identical provisions, reading as follows:

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

I will ask you if under the second article of the Constitution of the United States, which prescribes the qualifications for voters for Mem-

bers of Congress, and under the 17th amendment to the Constitution of the United States, which prescribes the qualifications for voters for Senators, each qualification being prescribed as being the electors entitled to vote for the most numerous branch of the State legislature, do not the States have the right to describe the qualifications for electors for the numerous branch of the State legislature—and, incidentally, for Congressmen and Senators?

Mr. GRAYDON. That has always been the theory, Judge, up to this time. But they are trying to disturb that.

Senator ERVIN. And I will ask you if virtually every State in the Union has not enacted statutes, establishing administrative machinery to determine how it shall be determined whether a particular person possesses these qualifications for voting?

Mr. GRAYDON. Every State in the Union that I know of has that, an administrative system whereby they can establish the right of a person to vote or not to vote.

Senator Ervin. I will ask you, if this bill, if enacted into law, would not confer upon the Attorney General of the United States the sole power to determine in a particular instance whether those administrative remedies should stand or fall?

Mr. GRAYDON. He could bypass them; not fool with them.

Senator ERVIN. I will ask you if you think that any executive official ought to be entrusted by Congress with the power to strike down at his election state administrative remedies established pursuant to the Constitution of the United States?

Mr. GRAYDON. I think that would be a horrible thing, and I think that is exactly what they are trying to do. I do not think there is a bit of doubt.

Senator ERVIN. Don't you believe that the Supreme Court of the United States would have to hold the provisions of virtually all the civil rights bills unconstitutional if Congress should adopt them?

Mr. GRAYDON. I do not think there is any doubt about that. But I was just telling them, Senator, when you were out, every time the Supreme Court describes something they put it under the 14th amendment, and they have practically abolished the first 10. It is cap-all that covers everything, so they say.

Of course, I do not want to criticize the Supreme Court of the United States; I am not going to. I just say that they can be wrong, thank God, like anybody else can. And when they are wrong, I think they ought to find out something about it. I do not think they are God, I do not think they have any deity or divinity in them. I think they are good men, but I think they could be wrong. If they were not, they would not be men.

Senator ERVIN. I will ask you this final question question, and if it does not apply to virtually every one of the so-called civil-rights bills, that these bills propose to grant so-called civil rights to certain groups of our citizens by denying constitutional safeguards and civil rights to all of our citizens, including the groups in whose name these bills are advocated?

Mr. GRAYDON. I think you are right, sir. I think that in trying we are using the Constitution in this respect, not as a shield to protect people, but as a sword to cut their heads off. It has become an offensive weapon, not a defensive weapon, in my judgment. And I think the bill, of course, is—Well, I am like the judge, who is a member of

our legislature, and they had a bill up to give a man the right—he was one of the grandest people whoever lived, but he was not very well educated—to allow a man to kill a rabid dog on sight. The old man got up and said, "Gentlemen, I am agin that bill, I am agin it". He said, "Kill a poor white man's dog, Mr. Speaker, gosh almighty, that is horrible, I am agin it."

So I will leave with you the final word that I am "agin" this bill, been agin it, going to stay agin it, and even though you may try to pass it, I will still be agin it, don't worry about that, trying to fight it as best I can in a legal fashion.

And I want to say further that some of the people in my State, and in the Southern States, I am sorry to say, are going to fight it probably not so legally. I regret that, but I think some of them are. Why, the Ku Klux Klan is being reorganized in South Carolina. For what, I do not know, but it is being reorganized. I deplore that—we have a law against it—and it should not be.

However, it is creating unrest, anger, bitterness, distrust—that is the worst thing. It is tearing our civilization to pieces.

Senator ERVIN. I might state that some persons recently attempted to reorganize it in one of the North Carolina counties. Some of the members resorted to violence. Some 70 of them were prosecuted in our State court and virtually every one of them was convicted, despite the fact that the Attorney General comes in and asks us to pass bills that are predicated on the thesis that the courts of the States do not possess the competency to enforce law in cases of that kind.

Mr. GRAYDON. I think you are right, sir, I think that the State courts in most every instance will enforce a law equitable and justly in accordance with the law.

Senator ERVIN. I will ask you one final question.

Mr. GRAYDON. Judge, you can ask me all the questions you want. You know, a lawyer has to have a glib tongue, a good imagination, and a total disregard for the truth. [Laughter.]

So you ask me anything you want.

Senator ERVIN. I want to ask you this: Would not these bills deprive all the American citizens of right far more precious than the so-called civil rights that they would confer upon one group?

Mr. GRAYDON. I consider the first 10 amendments the basis of our liberty, and I consider this strikes at the first 10 amendments.

I want to say one thing, when I was a little boy—that has been a long time ago—they threatened to have some trouble in my county, and my mother and my father took these people into our home and kept them for 5 days to prevent them from having trouble, at some considerable risk to our property and ourselves.

I just mean that everybody I know—I was laughing here—in the elevator I said "Did you boys leave your pistols with Senator Johnston?" and when I got up here I saw more policemen than I ever saw in my life. I think they thought I was going to shoot the place up. Because I had no idea then—I was forewarned, but not forearmed in this matter.

Well, gentlemen, I have enjoyed talking to you and I want to say, in the words of the Judge: Why kill a poor white man's rabid dog, gosh almighty damn, I am agin it and I will stay agin it.

Senator JOHNSTON. We are certainly glad and appreciate your coming before us, too.

The Honorable James Spruill.

STATEMENT OF HON. JAMES SPRUILL, STATE REPRESENTATIVE FROM SOUTH CAROLINA

Mr. SPRUILL. Mr. Chairman and Senator, and everybody, I want to express my appreciation for being permitted to appear here today and express my views as a Southerner, and I think, to express my views as one who is generally deeply interested in human rights and local self-government.

I think that there are too many people that think civil rights embraces human rights. I think there are too many people who fail to distinguish between civil rights and proposed Federal civil-rights legislation.

It is my view that we in the South are genuinely deeply interested in human rights; that we have civil-rights legislation on our statute books; that we have Federal civil-rights legislation now available; we have remedies in our State courts; we have remedies in our Federal courts; and that we do not need the intrusion that would be effected by this proposed new legislation that this committee, the subcommittee, is considering. I think that those bills would make the situation worse, not better.

You gentlemen are from the South, and you know that we are two minorities. The colored people of the South are a minority, and it is sometimes forgotten, I think, that we white Southerners are a minority. We are two minorities who are living within a circumscribed geographical area. We are bound together by our history, we are bound together for the future.

I take great comfort and great pride in the fact that conditions have improved so much so fast. It is still less than a century since emancipation. We have come far, and we have come far despite much do good legislation of that reconstruction period.

We had a flood of legislation, and I think that that legislation and the Federal bayonets which enforced it is responsible for that bitterness that lingered on so long in the South—that, and not the Civil War.

The South took pride at the chivalry of Grant when he returned Lee's sword to him at Appomattox. It took pride in his magnanimity to the soldiers of the South. However, that supposed Civil War reconstruction period left scars which were long in the healing.

And I want to call the attention of you gentlemen to the fact that that legislation was partly punitive, and it was largely political. No doubt much of it was designed to do good, but I question whether that accomplished the purpose for which it was intended.

Now, as I say, we have come very far. There has been mention of lynching. Lynching is a thing of the past in South Carolina and in the South. It is a thing of the past, not because of Federal marshals, it is a thing of the past because the people of the South demanded it.

I am sorry that Senator Ervin has left.

Senator JOHNSTON. For your information, those two bells was rollcall, and he had to get on the rollcall. If he gets back in time, I will go, and one of us will stay here.

Mr. SPRUILL. I realize that, Senator Johnston, but I wanted to say that I remember with pride a story that concerned one of his circuit judges in North Carolina. It was back in the days when I was in college. They were having a capital trial at Pittsboro, N. C., and during the course of that trial a mob came in, intent upon lynching the prisoner on trial for his life. There was no lynching that day, and the reason was that that country judge, presiding there at Pittsboro, pulled out a good 45 revolver and he stood and he said, "The first man who comes within the bar of this court, I will kill."

Now, that judge prevented a lynching. I think he is symbolic of many law-enforcement officers in North Carolina, South Carolina and throughout our South. He is symbolic of many good citizens who have been just as intent as he on preventing lynching.

And I tell you that that judge with his 45 gave more protection to that prisoner than would a dozen Assistant Attorney Generals, 250 Federal marshals than one Corps of the United States Army that day in Pittsboro.

Senator JOHNSTON. Off the record.

(Discussion off the record.)

Mr. SPRUILL. Mention has been made to our voting. Now, we readily recognize that all qualified citizens are entitled to vote regardless of race, color or creed. We are proud of the fact that in South Carolina we accord all peoples that privilege.

Mention has been made to our South Carolina law, and I want to emphasize the fact that the test is a simple literacy test, nothing more, nothing less. A party is entitled to register and to vote if he or she can read and write. Now, there is an alternative, but it is purely alternative, and that is to own and pay taxes on property assessed at $300 or more. But the vast majority of our people vote on the basis of a simple literacy test. And as I vote, I stand in a line made up of white citizens and colored citizens, all waiting to get to the poll to cast a ballot.

We have no poll tax in South Carolina, that has been repealed for some years.

Now, I am especially interested in education. We have a difficult problem to educate all of our children. As the Senator from South Carolina so well knows, we were an impoverished people after the Civil War. We are still relatively low in wealth. We are third from the bottom per capita, and we have more children than most States. Only one State in the Union has more children per capita than South Carolina the national average of population under the age of 20 is 34.3 percent. In South Carolina it is 44.9 percent. That means we have more children to educate and fewer adults to pay the bill.

And incidentally, it is an interesting thing that the one reason why we have relatively more children is because we have many parents who have gone north and left their children in South Carolina and in our other Southern States. We have many colored parents who, for economic reasons, have gone to New York, Detroit, Chicago, or somewhere else and have left their children with their aunts and their uncles or their grandmothers. Now, those parents could have taken

their children with them to go to deseggregated schools in the North, but they have left them in South Carolina to be educated in our schools at our expense. And I say to you that we are trying to give them an ever better education.

Now, mention has been made of our school building program. I am proud of it. The countryside of South Carolina is literally littered with new schools, new schools for both races. In my own community, which is roughly where the population is of half and half, we have roughly about 3,000 school children. We have built 5 new schools since 1951, 2 of those schools for white children and 3 of them for colored children.

Now, we have come very far. We still are giving what I think is less than an adequate, a sufficient, education to all of our children, white and colored, but we are moving forward for both. Our teachers are being paid according to the same standard, there is no discrimination there.

And mention has been made to the fact that we have not had a single application by a colored child for admission to a white school. In other words, despite the Supreme Court decision, we do have segregation working by mutual consent.

Now, I was greatly disturbed by the Supreme Court decision. I was disturbed more by the reaction to the decision than I was by the decision itself. It happens that I at that time was making a campaign for the South Carolina house of representatives and wherever I went I heard that decision discussed.

I heard too many comments that the schools would have to be closed. Now, I was the only 1 of 7 candidates who discussed the problem on the stump. My statement was that I did not know the answer, or I thought the answer was more education and not less—more education and not less for all of our children.

And we, in South Carolina, have been moving forward in good faith to give all of our children a more adequate education.

Now, I want to make it clear that I cannot tell you what the State of South Carolina will do—I do not think anybody can. But I can vouch for the fact that sentiment has become more sharp since the decision. And I am disturbed because I think that our public-school system is imperative and if it should go under, it would be calamitous. It would be the more calamitous for those who come from the economic section of our society where their parents and friends are less able to give them an education at private expense.

Now, many, many people share my apprehension for the school system, and I want to urge this committee to remember that an Assistant Attorney General in every school district could not teach the kids; a Federal marshal on every corner could not educate our children. I hope that this Senate and this Congress is going to use restraint so that we will be able to continue to give all of our children an increase in a good education, restraint so that we can continue to improve our lot, the lot of both of our races.

I thank you, Mr. Chairman.

Senator JOHNSTON. The committee certainly thanks you for coming before us, too.

The next witness is the Honorable Robert McNair of the State house of representatives.

STATEMENT OF HON. ROBERT E. McNAIR, STATE REPRESENTATIVE FROM SOUTH CAROLINA

Mr. McNAIR. I am State Representative Robert E. McNair from Allendale, S. C., chairman of the judiciary committee of the house of representatives of the State of South Carolina, and I appear as a representative of the State at the request of Governor Timmerman.

Mr. Chairman, it is certainly a pleasure for me to have this privilege of appearing before you, sir, as the chairman of this subcommittee, and in line with what the gentleman just said about a copy being received by the other members of the subcommittee, I trust that in addition to it being received, that they will also take the time to read it.

We are very sorry that they could not be present for this hearing and hear the position that South Carolina wishes to take.

Now, last week Mr. Spruill, a member of the ways and means committee and a member of the educational committee of the State house of representatives, and one of the real authorities on our educational system in the State, just spoke and failed to put into the record, through modesty, some of his accomplishments.

We are delighted to find some friendly faces and friendly names on this subcommittee. Across the hill, when we appeared before the House Judiciary Subcommittee, we found no Southerners. Most of the gentlemen were proponents of the legislation, or either from another section of the country, who were somewhat unfamiliar with the problems that we have in the South.

Now, as we appeared before that committee, I asked the question——

Senator ERVIN. If you will pardon a statement at this point, they ought not to be unacquainted with the long fight which labor had to make against government by injunction. There was an injunction issued against Samuel Gompers, which virtually forbade him to even tell anybody that a union was conducting a strike in an effort to get a 9-hour day.

Government by injunction is government by judges. Some people tell us that we ought to be willing to trust all our rights to judges. Our ancestors did not trust judges. Labor did not trust judges. Labor kept fighting government by injunction until it obtained a law which gives labor a right that the proponents of these bills seek to take away from all other Americans, namely, the right of trial by jury in contempt cases.

Mr. McNAIR. Mr. Ervin, I agree with you, sir, and it seems to even go further than that and to deny to the people of the South the right of protest, because it says those who are about to engage. And if anybody can define when someone, and determine when someone, is about to engage, then I have not yet found the answers.

Senator ERVIN. One other observation. Someone may wake up one of these days, if this bill passes, and find out it does not apply solely to the South. The 14th amendment prohibits the States from depriving any citizen of his liberty without due process of law. A great many States have passed laws giving labor, in general, and organized labor in particular, certain rights.

It has been held under the 14th amendment that the right to pursue an ordinary occupation of life is one of the liberties secured to people by due process of law. And that right of liberty of contract

is another one of the liberties secured by the 14th amendment. It is not inconceivable that at some future day an Attorney General may bring an injunction proceeding in connection with laws of States relating to labor, and that labor will find out that it has lost by this bill what it secured under the Norris-LaGuardia Act, since this bill, if enacted would be subsequent to the act giving labor a right of trial by jury in cases of contempt, it might well be construed by courts to repeal that law by implication.

Mr. McNair. It seems to me we would be left to the whims and wishes and political inclinations of an Attorney General, and we would have control of the thinking of the people by the wishes of an Attorney General, sir.

Now, one thing that strikes me is something that the Senator from North Carolina commented on a few days ago. We asked the question over on the House committee, who was supporting this legislation, who was appearing before the committee to request, demand, and say we have to have it. We find that those groups which have alined themselves together and claim to represent the people whose civil rights are being violated. I made the comment in the House committee hearing that I could not find in the records of the hearing of that committee, this year or last year, where a single person appeared in his own right for himself and said, "My civil rights have been violated and we need this legislation for my protection".

The only people who appeared were those representing organizations who said themselves that, "We represent this large segment of people whose civil rights are being violated".

Now, that was an interesting point. Representative Miller from New York said, "I agree with you on that because neither has anyone from any other State, not only South Carolina, but from any other State, appeared".

I did notice that a few days ago in a frantic effort they were able to bring one person who said he had escaped from Mississippi and went to the North, who came before the committee and said he had to leave because he had been shot at. But I also noticed with interest that after being interrogated by the distinguished Senator from North Carolina, he did not reappear the next day.

Now, we find that the big clamor and big——

Senator Ervin. And it was suggested that the questions I asked were not relevant, notwithstanding the fact that one of the bills undertakes to set up a commission to study whether undue economic discrimination has been practiced and notwithstanding the fact that this particular witness made complaint that he had been compelled to flee from Mississippi and leave a $15,000 a year business behind.

It was suggested that questions as to whether he paid any income tax on that $15,000 a year business were not relevant.

Mr. McNair. I think they were the most relevant, sir, and most interesting to determine the facts.

Senator Ervin. Also, it was suggested that questions about the identity of persons he alleged had been murdered and thrown into rivers in Mississippi were not relevant, notwithstanding the fact that some of these bills undertake to extend the police power against homicides to the Federal Government.

Mr. McNair. I think that is an excellent point, Senator. And we read with interest that that was the only person who appeared, and

that with the probing that you did so well he was not able to reappear the next day.

And that is, again, something that I would like to comment on, that if we take the statements and alleged charges, or alleged violations, by a group of people who selfappoint themselves as the leaders of minority groups, and they are able to produce only 1 or 2 who will stand themselves and say, "My rights have been violated," then we are going to legislate and destroy the individual liberties and rights of all of the people to solve 1 or 2 isolated problems, that we are going, certainly, in a direction, and the trend is in a direction, that is most alarming to me, and certainly to all of us.

Now, we find in the proposed legislation, and I would like to comment on it, that it is an effort, as the Senator from North Carolina pointed out earlier, to protect the rights, so-called rights, that are being denied to a minority group at the expense of denying to the people of America a right that they have been born with, that they have lived with, and that we always thought we would die with.

That is the constitutional right to be faced by an accuser, to be permitted to cross examine him, and to be tried by a jury. In addition to that, it goes further and permits a commission, which would meet in any place in the United States and subpena anybody at any time. And only one bill, I notice, has not less than 24-hours' notice must be given. The others mention no time, so we assume with this 24-hour notice to appear, if he refuses to appear, or if he does appear and is interrogated by we might say, an impartial group and says one little thing wrong, or crosses himself up one time, he can be tried by the Attorney General in the name of the United States of America, in a foreign jurisdiction. He is not only denied the right of jury trial, but right of being tried in his own jurisdiction.

Now, I would like to comment on the legislation itself, briefly, and I think the bills follow pretty much the same pattern, although they have some different language from those in the House. But there is one thing interesting to note, in some of the legislation, that the language appears that the Congress finds that these freedoms are being denied and these civil liberties are violated. That is a finding of the Congress.

If the Congress of the United States is going to find something to exist as a fact and charge and condemn the people of the United States with the existence of that condition, then they should have before them more than alleged charges and accusations by groups who have not been able to bring before the Congress individuals who have said, "My liberties have been violated."

In addition to that, to further show the inconsistency of the thought in the legislation itself, it goes further, after the Congress finding and condemning and says it is going to set up a commission to investigate and determine if those facts and those things actually exist, and then go further and set up a joint congressional committee to also investigate and determine if the conditions exist and to make recommendations. Those are inconsistent procedures. And certainly, we all know that the problem that they are realling aiming at, segregation in the South, is a problem that is so infested with passion and by pressure groups that it is almost incapable of an impartial and fair investigation.

And certainly, one feature that struck me is that the commission itself would have the right to use the services of volunteers and volunteer groups.

Senator ERVIN. You do not anticipate that any impartial man would be appointed to serve on this commission, if the bill providing for the commission is passed, do you?

Mr. MCNAIR. No, sir; no, sir; I do not think they would even be considered for appointment to it, sir. I think the Attorney General has certainly already expressed himself, he has shown and stated that he is convinced—I assume this is his legislation and he is going to be the daddy of it right on down the line, and certainly, no partial commission would ever be appointed.

Senator ERVIN. I would say this, as far as I am personally concerned, if there were a proposal for the establishment of a commission to be composed of men removed from the political arena, such as State judges from the highest courts of the various States, to conduct a fair investigation of this entire matter, I would welcome it. Although that kind of a commission would find that there are some unfortunate situations in this field, it would also find that such alleged situations have been multiplied and magnified by the proponents of these bills out of all proportion to the facts.

Mr. MCNAIR. Senator, I think you are absolutely right, if you could get an impartial investigation. But the thing that strikes me is the legislation itself—wanting to find the facts and at the same time proposing the substantial legislation that is going to be the remedy to a condition that it wants to investigate first and find out if it exists—I say I am not sure that this is something that can be investigated.

I think the political pressure—and we must say that some of these bills dictate to me that political expediency had played a great part in the introduction and in the thought behind them. And I think, too, there is the need for it—is it there, has it been established that there is a need for this type of far-reaching legislation?

I was interested to note in the Congressional Record that the Hon. John F. Shelley of California, in appearing before the subcommittee of the House Judiciary Committee, made the remark, and I quote:

> We do not have to prove the existence of the problem. What we do have to prove is that we are looking for an honest solution.

That, I believe, is a fair statement of what some people think about this legislation. We do not have to prove the existence of the problem.

That, to me, in analyzing that statement, dictates that political expediency means more than the denial to a great majority of Americans of the constitutional right that they have so long had and enjoyed without any foundation or reason whatsoever. That is the thinking of some people.

Senator ERVIN. Well, the whole proposal made by the so-called civil rights bills, and particularly the ones that the Attorney General recommends, is that certain groups of our citizens shall be given rights superior to any rights ever asked for or received by any other group of Americans in the long history of this Nation.

Mr. MCNAIR. In addition to setting up the commission, in addition to the procedure to be followed, and we notice also the time element involved, they can meet anywhere, they can subpena witnesses any-

where at the expense of the Government. The Government will pay the expense of the accuser, but the accused must bear his own expense. If he wants an attorney, he has to pay his own lawyer. He has to pay his own transportation, wherever it might be, while the United States Government is going to bear the expense of the accuser, furnish him with an attorney, bring an action if the Attorney General desires, in the name of the United States of America, and the United States pays the cost, the court cost, for that action.

Now, that also is an alarming situation. That is inviting accusations and charges by the so-called fanatics or social reformers, as I like to refer to them.

Far be it from me, as a member of the Legislature of South Carolina, to say, whether or not the Congress wants to appoint a committee to investigate, whether it should or should not. I think that if a committee is appointed, that it certainly should be a committee in which all groups are at least represented, and it should attempt to be an impartial investigation. And I would not say what the Congress should do about its own investigation, but I doubt the wisdom of an investigation into a matter such as this.

The power given to the Attorney General is one that has been covered time after time. The gentleman who preceded me, and Mr. Pope, representing the South Carolina Bar Association, who will follow, will comment on some of the laws that already exist in South Carolina and in the United States.

Frankly, we have adequate laws to protect the civil rights of all people. We have adequate remedies available; we have adequate procedures available for them.

There is one interesting thing to note, that in our lynching statute, that if they find that a lynching has taken place, they can sue the county, and if it did take place, not less than $2,000 damages must be returned by the jury. No more than that, but no less than that.

Our criminal punishment, the penal provisions of our antilynching statute, are much more severe than those proposed in this legislation.

Then we come and we find the antipoll tax. South Carolina has no antipoll tax law as a prerequisite for voting any longer.

Senator JOHNSTON. Did you repeal that believing that the State had that right and not the Federal Government?

Mr. MCNAIR. We did it, sir, on our own. We did it freely and vountarily by a vote of the people on a constiutional amendment to repeal the poll tax as a prerequisite for voting in South Carolina.

Senator ERVIN. Incidentally, North Carolina did the same thing, about 37 years ago. We repealed the poll tax as a prerequisite for voting for any official, State or Federal.

Mr. MCNAIR. I do not recall, but I think only 5 or 6 States still have it. And as the attorney general from Virginia said, if the payment of $1 and $1.50 poll tax is unfair economic pressure to deny somebody the right to vote, then it is an awful situation if they cannot afford that, when all of the poll tax laws that I know of, that money is allocated specifically to education in South Carolina it was, and in South Carolina it still is. Although it is no longer a prerequisite, we still have the tax to support our educational system.

The FEPC law is embodied in the legislation here. It is also embodied in a phrase called economic pressures. I think that was an attempt—they spell it out in some of the bills pending before this

body. I think that, again, is where the same gentleman from California, in appearing before the House committee, said that:

> The establishment of a Commission on Civil Rights to serve as an authoritative body for studying the legal and moral issues, and for formulating executive policy and recommendations is an absolute essential in bringing the executive branch of the Government to a proper exercise of its functions.

And he said that that was to provide only a framework and that:

> If the legislative structure is to be complete, we must gird that framework with a definite body of principles and definitions upon which to act.

Senator ERVIN. We have some very wide interpretations of the meaning of the vague term "unwarranted economic pressure." There was a colored boy from North Carolina up here the other day who suggested that it was unwarranted economic pressure for a banker to call on his father to pay his note when it fell due. I asked him how long the bank had had his father's note, and he said he did not know, it might have been there for years.

Off the record.

(Discussion off the record.)

Mr. MCNAIR. It seems to me that economic pressure to obtain rights is being used by other groups in the United States. I do not believe that the Congress or the proponents of this legislation would deny to labor the right to strike, pull its men off the job, discontinue production, in order to bring economic pressure on the owner of an industry, economic pressure on the public even to obtain its rights under the power to bargain.

The boycotts against people who differ with other groups is a form, in my opinion, of economic pressure. When someone boycotts a merchant, boycotts a transportation line, or boycotts anybody else, because of the personal feelings or the policy of that person or his organization, it is economic pressure. It is being brought and used by the very same groups that claim that economic pressure is being brought to bear on people in the United States.

We go further and say that the legislation is illadvised. Mr. Spruill has outlined to you, and Mr. Graydon has pointed out very ably, the feeling that is beginning to grow in South Carolina where we are familiar with it, and all over the South, a feeling of distrust, which is not good. And certainly, you two gentlemen from North and South Carolina are very familiar with the good feeling, the feeling of trust, the feeling of good will that existed between the races prior to the Supreme Court decision in 1954.

Today, as never before, the people of the two races are drawing further and further apart. There is a feeling that they cannot sit down and talk together, they cannot stand and discuss problems; there is a feeling that it is not the thing to do. Why? Because of the pressure, because of all this legislation that is being brought and that people are trying to force upon us in the South.

Much progress has been made.

I hope the members of the committee who are not here will study the progress that has been made in the South, in all fields, where the races are involved. And South Carolina has not only made facilities equal, but we have gone to the point of making them identical. We have almost reached what we call an identity of facilities, rather than equality of facilities.

This legislation, if passed, giving the Attorney General the right in his judgment to determine what is unwarranted economic pressure, to determine what any phrase used in it actually means, is going to give him the power to actually control the thoughts of people. Because if, for instance, a decision is handed down, an injunction issued, anybody who thinks differently and speaks, or is about to speak, in opposition to it, would be liable in contempt of court. And if he wants to bring that action in the name of the United States, which he would have the power of doing, that person is denied the right of jury trial.

That says to me that apparently the Attorney General has lost faith in our judicial system where a person is given the right of jury trial. He has lost confidence in the juries and the jury system.

And I want to say this as a warning, that if he has already lost confidence in it, and he forces upon the people of the South and of the United States this ill-conceived, ill-advised, unecessary, unwarranted legislation, that he is really going to destroy law enforcement as we know it today.

Senator JOHNSTON. In effect, he has lost confidence in all the district attorneys; has he not?

Mr. MCNAIR. I assume he must have by wanting somebody in his Department, special, to handle the matter under direct instructions from him.

We are alarmed over the effect that this proposed legislation might have on law enforcement in South Carolina. We think it is going to be difficult to get good people, the men that we now have, to continue as law-enforcement officers when they will stand the possibility of being subjected to harassment, to ridicule and condemnation by a commission, first, by a hostile Attorney General who can haul him into court, prosecute him, try him without a jury for denial of civil liberties. How are you going to enforce the law if some person, who wants to be a crybaby, says, "My civil liberties were violated"?

Now, you, as a former judge, sir, and Senator Johnston, as a lawyer, know how easy it is for anybody to say, not prove, but to allege and say, "My civil liberties were violated when I was arrested and placed in jail."

Senator ERVIN. If this bill is passed, there are not likely to be as many qualified applicants for appointment to Federal district judgeships as there are at present?

Mr. MCNAIR. No, sir.

Senator ERVIN. This is true because the bill would abolish all constitutional safeguards erected to protect our people against bureaucratic and judicial tyranny, such as right to indictment by grand jury, the right to trial by petit jury, and the right to adequate representation by counsel.

And it also would deny in many cases the right to confront and cross-examine adverse witnesses.

And here is the district judge, who sits alone in what is essentially a contest between the Federal Government and the State Government—a contest in which the Federal Government is undertaking to push the State government out of a field which has always belonged to the States. The district judge has to sit there, and not only decide the law, but he has to decide all of the facts. He has got to say who is telling the truth and who is not telling the truth.

Mr. McNAIR. That is right.

Senator ERVIN. And I do not think that this is calculated to improve the respect which the public holds for the Federal district courts. In fact, I think it is likely to cause exactly the opposite.

Mr. McNAIR. That is my next point, sir. Not only is it going to affect law enforcement——

Senator ERVIN. While I am on that point——

Mr. McNAIR. Yes, sir.

Senator ERVIN. After 1867, the Southern States were subjected to the terrible tyranny of the reconstruction acts, which were passed to maintain one political party in power and for no other purpose. Federal courts in the South were used to enforce those acts for political purposes. It took at least a generation and the devoted labors of such great Federal judges as Harry Grover Connon, John J. Parker, E. Yates Webb, Johnson J. Hayes, Don Gilliam, and Wilson W. Warlick to restore the confidence of the people of North Carolina in Federal courts. Until the labors of these great jurists bore fruit, my people looked on Federal courts as courts of a foreign jurisdiction. The Attorney General's bill invites a repetition of that tragic state of affairs.

Mr. McNAIR. That feeling, sir, is already beginning to reestablish itself in South Carolina and other parts of the South. The Federal court system is actually going to lose its effectiveness in the end as a result of this legislation if it is forced on the people. But because it is going to force disrespect, as you say, sir, it is going to breed discontent, it is going to force the southern people to use the only power they have, and that is the power of protest against enforcement of Federal laws

People are beginning to say that is our only recourse if it is passed. The jury can refuse to convict in the Federal court on a criminal charge, if they so desire, and I do not know how we are going to get around that, the power of a jury, when a person is given a jury trial——

Senator ERVIN. They are going to get around that by abolishing the jury.

Mr. McNAIR. I am talking, sir, about this, they are going to have to extend it to every criminal process in the whole system in order to maintain the effectiveness of the Federal court.

Senator ERVIN. If there is any valid argument against jury trial in cases of this kind, the same argument applies to cases of all kinds. Perhaps we ought to pass a law authorizing a Federal judge to issue an injunction against everybody not to violate any law and not to sin, and let the judge as this bill provides, punish all lawbreakers and all sinners for their conduct without jury trials.

Mr. McNAIR. And if this is an indication of the trend of thinking of the Attorney General's Office and proponents of this legislation, then you will end with the complete abolition of the right of jury trial in order to enforce all Federal criminal statutes because of the protest of the people, because of the discriminatory legislation that is being recommended.

They will exercise their only right, and that is a constitutional right to protest against enforcement of Federal laws, and the Federal Government will have to destroy your entire system. That is something that not only affects us, as you pointed out earlier, but the rights, the individual rights. Not State rights, not local self-government, but

the individual rights of the American people that are being destroyed and annihilated by the so-called necessary civil-rights legislation, is something that everybody ought to be conscious of.

We are not here just as southerners, as Mr. Spruill said, and Mr. McLeod, we are here as Americans who believe in our constitutional rights.

And someone mentioned the Supreme Court and the consistency of its decisions, or the inconsistency. Mr. Celler and I discussed that very briefly in the House hearing, the consistency of the professional football and the baseball decisions. We finally came to the conclusion the only way to differentiate those decisions was to consider the size and shape of the ball. And we go back to the Supreme Court decisions on your segregation where they completely upset all precedent. And that is something that we had lived with, we had built schools based upon it, we have spent millions and millions of dollars to provide equal facilities and provide for all races a good education, good teachers drawing the same pay based on their grades, certificates they hold, good schools, good facilities, good transportation.

We do not know, as Mr. Spruill said, what South Carolina will do. We do feel that we know the thinking of the people of South Carolina, and we do not think they will accept this legislation. And those very same people who come in the form of Santa Claus to a small group, as they say, are going to take from those people all that we have given them in the past 50 years. They are going to deny them the right of a public-school education, and they are going to deny to them the right of free transportation, they are going to deny to them all of the rights that they have had.

If the people of South Carolina stand firm,—their thinking is along that line, and there is no point for us, no use for us, to deny the real thinking of the people of our State.

Now, my last point is this: So many people take the position that the courts have ordered integration. I do not read the decision that way. And if the people of South Carolina and the South want segregation, if the two races want it, and I say, in South Carolina not a single child, a Negro child, has applied for admission to a single white school, and not a single white child has applied for admission to a Negro school since the Supreme Court decision in 1954. If they want to maintain segregation in the schools, then why should anyone from anywhere else want to set themselves up as the judge and say "Whether you want it or not, we are going to force it down your throat"?

Senator JOHNSTON. And a good many of our counties serve notice if anyone wants to transfer from one school district to another, to do so on or by a certain date, just before school opens.

Mr. MCNAIR. On or by a certain date. We have the procedure set up, and if they are denied we have an appeal set up for them. We have adequate procedural remedies for them. We have that with respect to the schools, we have it with respect to the right to vote.

Mr. Pope, who is a leader in our party, can tell you, we have also—I might point out, Senator, as you are aware, one thing we do not have the right to do in South Carolina is to require everybody to vote in our primary to be a member of our party and of our thinking, where they can in other States deny them the right to vote in a primary unless they belong to the political party. But we say, we open our primaries

up. We let everybody vote in them. Other sections are not denied that privilege.

Forced integration is something that is not going to work. We cannot legislate the social habits of a people, we cannot legislate the social trends of a people. And any attempt to do so is going to bring a rebellion from those people who are involved and affected.

And it is our earnest plea that this committee, certainly this Congress, be very careful and deliberate in its consideration of this legislation, thinking not only of the political implications involved, but of the practical problems that are going to arise, the damage that is going to be caused, the ill will that is going to breed among the peoples of the South, and the rights of the American people that it is going to destroy in order to satisfy a few so-called social reformists who have allined themselves with leftwing groups to form a great conspiracy to force upon the people something they do not want.

Thank you.

Senator JOHNSTON. I notice it is 10 minute to 1, and the next witness that we have here is Mr. Thomas Pope, attorney, representing the South Carolina Bar Association.

How long would you take?

Mr. POPE. I would think about 20 minutes, Senator.

Senator JOHNSTON. We can wait until after lunch if you desire.

Mr. POPE. If it suits the chairman, I would as soon go ahead now, Senator.

Senator JOHNSTON. Come around, then, and we will proceed.

Mr. POPE. If you think there is any likelihood of any other Senators being present here this afternoon, I would like to speak before some of the antagonists as well as the friendly members.

Senator JOHNSTON. I notice we have two members of the legislature here, the Honorable Joseph O. Rogers and the Honorable John West.

Mr. MCNAIR. They are observing the proceedings.

Senator JOHNSTON. They have the right to testify, and we would be glad to have them do so. I just wanted to identify them for the record.

If you want to put in statements later, they may do so.

Mr. MCNAIR. Fine. We would like to have their presence noted.

Senator JOHNSTON. I have one letter here from Solomon Blatt, a Member of the House. He writes me a letter stating:

On yesterday my doctor advised me that I could not make the trip to Washington to represent South Carolina at the civil-rights hearing on March 4.

In that the doctor recommended that he not come, he asked that I put this letter into the record.

Therefore, it will be put into the record as part of the testimony.

(The letter referred to is as follows.)

THE HOUSE OF REPRESENTATIVES,
STATE OF SOUTH CAROLINA,
March 1, 1957.

Hon. OLIN D. JOHNSTON,
United States Senator from South Carolina,
Washington, D. C.

Dear OLIN. On yesterday my doctor advised me that I could not make the trip to Washington to represent South Carolina at the civil-rights hearing on March 4.

I had planned to leave here Sunday and be present for the hearings on Monday. I have not been well and have been considerably worried about myself. I am

feeling some better at the moment. It is impossible for me to get away within the next 2 weeks and I think it is a crime that the Senate committee will close these hearings without giving all of us an opportunity to appear. I know that you have done everything within your power to keep these hearings open and I commend you for the stand that you have taken.

I want you to tell the Senate committee for me that the people of South Carolina are a tolerant people and I believe that my political life is the finest example of the tolerance of South Carolinians. While I belong to a minority faith, the people of my State paid for the painting of my portrait and it now hangs in the hall of the House of Representatives. This is the finest example of the tolerant attitude of the people to all of our citizens. If these civil-rights bills pass there will be a general breaking down of law enforcement and jurors sitting in the Federal courts will not convict citizens charged with crime. There has been splendid cooperation between the law-enforcement officers of South Carolina and the Federal Bureau of Investigation. The passage of these bills will mean that the State law-enforcement officers will no longer cooperate with the Federal officers. Federal courts will stand in bad repute and our people will show their resentment toward all Federal officials by failing to cooperate with any of them.

There is no need for the passage of these unconstitutional bills. Our people are law-abiding citizens and we do not need this type of legislation. Let alone, South Carolinians will attend to the needs of all of our citizens and we do not need any outside help. I hope that you will get enough help to defeat these bills.

I regret my inability to appear and I want you to know that you have the support of all of us in your efforts to defeat this legislation. Keep up the good work and with kindest regards.

Sincerely

SOLOMAN BLATT, *Speaker.*

Mr. MCNAIR. He requested that we also express his regret for not being able to appear because of his health, and he would have liked very much to have the privilege of appearing, sir.

Senator JOHNSTON. We will recess now and come back at 2:30.

(Whereupon, at 12:50 p. m., the hearing was recessed until 2:30 p. m., of the same day.)

AFTERNOON SESSION

Senator JOHNSTON. The committee will come to order.

I believe we have two witnesses here who are members of the house, Joseph O. Rogers, Jr., and Mr. John West.

Both of them are members of the legislature in South Carolina and I would like to have one of you or both of you come around and testify.

What about you, Mr. West?

STATEMENT OF JOHN WEST, MEMBER OF THE STATE SENATE OF SOUTH CAROLINA

Mr. WEST. I am John West, a member of the State senate from South Carolina.

Mr. Chairman, I appreciate the opportunity of making a few extemporaneous remarks to the committee. I do not feel that I can add any substantial argument to the very able and eloquent statements which have been made by my friends and colleagues this morning and which I feel sure the chairman and the attending committee member this morning heartily concur in. I do, simply by the weight of numbers or by the bulk that I can add, express my deep concern about the continued encroachment through the medium of Federal legislation upon the rights of the States, and the effect that it is having upon the attitudes of the people of the State.

In the first place, the race relations between white and colored have deteriorated as much since May 17, 1954, as the good that had been accomplished over the preceding half century.

Nowadays there is a feeling of distrust, a feeling of suspicion, where before there was a feeling of friendliness. I feel that that atmosphere was created by the unwarranted decision or by the unjustified decision which this legislation proposed to continue to implement.

Secondly, I as a person vitally concerned and extremely interested in the education of our youth am afraid that one of the announced purposes of this legislation being to enforce the segregation decision by the power of injunction will result in the closing of the public schools if this weapon is given to the Attorney General and he insists upon using it, as some of the proponents of its announce.

It will mean the end of the public-school system in my State. I think I can say safely that if this legislation passes and is used to end segregation in the public schools of South Carolina, the general assembly will, by unanimous vote, close those public schools. That would be a tragedy, Mr. Chairman, which would have its greatest destructive effects upon our succeeding generation, and from which it would take many, many years, and possibly generations, to recover.

The third and final point that I might briefly make is that in the passage of this legislation it is the initial step in the destruction of basic civil liberties which we have heretofore held and cherished and fought for. I see this as the initial step in the breakdown of our jury system because, Mr. Chairman, as has been so ably pointed out here, particularly and as I say concurred in by the distinguished Senator from North Carolina whom I am glad to see has joined us, this Government of law by injunction is the first step in the destruction of the jury trial.

It will soon become apparent to persons in the Federal court that juries will not convict if violations of law such as these are tried.

Senator ERVIN. I might also add that in any case the jury will not convict unless they are satisfied beyond a reasonable doubt of the truth of the charge against the defendant.

Mr. WEST. That is right.

Senator ERVIN. And some prosecuting attorneys like to get convictions regardless of whether the evidence is sufficient to establish guilt beyond a reasonable doubt?

Mr. WEST. Unfortunately many prosecuting attorneys feel it is their duty to get a conviction, once a case is brought into court, and this type of legislation will give rise to charges based on hearsay, without the right of being confronted by the accuser.

Before long, if the Federal juries refuse to convict in cases covered by this type of statute, then there will be a proposal to extend and to further eliminate the right of trial by jury.

I think, Mr. Chairman, I can safely say that if there are any cases which this legislation might be designed to cure, that the cure is much worse than the disease.

Thank you, sir.

Senator ERVIN. Can you think of any valid reason why we should abolish jury trials in cases of this character and not abolish them in all cases?

Mr. WEST. No, sir, and as I say, Senator, I believe that this is the initial step, and before long, if this is allowed to become law, then the jury trials will continue to be whittled away until we have nothing left. We will have the star chamber proceedings that our ancestors successfully threw off in establishing the basic liberties of our Constitution.

Senator JOHNSTON. It happens that I am a member of the Internal Security Subcommittee and we have been investigating and we find now that we have people in this Nation of ours that want to overthrow our Government.

Do you think they should be treated better than people in this category?

Mr. WEST. No, sir, but this is class legislation designed primarily at the South, and there is no basic need for it. I might say, Mr. Chairman, in my county I have never seen nor heard of any complaint of any person being denied the right to register or vote on account of race, color, or anything of that nature.

Senator JOHNSTON. I agree with the Senator from North Carolina, too, that in some cases the district attorneys are overanxious to convict everybody that comes into court.

Well, do I remember back before the Republicans came in, my junior law partner happened to be the district attorney. The first court that he held he called me immediately and said, "You know, I held court today and we convicted everybody that came in the court this week."

I told him I did not want to hear him make any such statement in the future. I did not want him to get into the category where he thought everybody ought to be convicted who came into the courtroom.

Thank you very much, Mr. Chairman and gentlemen.

Senator JOHNSTON. By the way, we have Senator Hruska here with us this afternoon. Glad to have you here.

Senator HRUSKA. Thank you.

STATEMENT OF JOSEPH O. ROGERS, JR., MEMBER, STATE LEGISLATURE OF SOUTH CAROLINA

Mr. ROGERS. Mr. Chairman, I am J. O. Rogers, member of the legislature from South Carolina.

As my friend, John West, said, we did not come here prepared to make a statement today, but we feel very strongly about the matter, and we are delighted to add our wee small voice for whatever weight it may carry to what has already been said here today.

One of the gentlemen at the luncheon table today commented that perhaps all of the wisdom of mankind could be found in the study of history, and I think that that is eminently true, and I wondered as just as a brief general observation on this subject that we are talking about here today if we might not look at some of the history of our country.

In the early days, a man's personal integrity as well as his basic honesty and his ability, were considered the standards by which he attained or got some sort of recognition.

In those days I am happy and proud, as I know you are, that many men from the South attained positions of trust and honor in our Government. It has been a cause of some concern to me, as I am

sure it has been to you, that in this period of so-called civil rights fights we have been deprived of the use and abilities of some of our best citizens because they happened to come from a particular geographical area in this country. I think it is undenied that upon whatever party he may base his allegiance, a man from the southern section, the southeastern section of the United States now could not be President of this country.

Senator ERVIN. In that connection, Woodrow Wilson wanted to be President. He moved from Virginia to New Jersey so he would be eligible. Grover Cleveland's parents wanted Grover to be President. His father was a minister down in eastern Virginia. In order that Grover might be President his parents moved from the Commonwealth of Virginia to New York, where he had been born. If Woodrow Wilson had remained in Virginia and Cleveland's parents had stayed there, neither one of them would have been President of the United States.

Mr. ROGERS. Yes, sir; and with that such a well-recognized fact, it would seem to me——

Senator ERVIN. Notwithstanding the fact that both of them had civil rights to be elected to the Presidency?

Mr. ROGERS. Yes, sir. I was just going to say, Senator, that in view of that it would seem that we, the people from our section, would be those who were claiming violation of their civil or inherited rights.

I wonder as the Supreme Court saw fit to hand down a decision that has been interpreted as an order to integrate, although we do not read the decision that way, what has happened to the civil rights of some 40 millions of Americans who happen to live in our particular area of this country.

We come here to make no particular cry about our civil rights. We believe that under the established order of justice, that we will be able to secure our rights.

We believe that we have historically been able to establish the things that we are entitled to and to get those things and to protect and to defend those things, but we are faced now with the proposition that in this conflict, the United States of America is about to put its shoulder behind the small group who would have us hauled into court, who would have cases made against us, who would be paid by the United States to investigate us, paid by the United States to prosecute us, and paid by the United States to incarcerate us, and we must defend those things with what little bit of money and ability that we have.

I hope that the Senate of the United States will not conceive this bill or these bills as just a weapon aimed at the South, for if it is a law and if we still have law, it will be a law that will apply to all of this country, and whatever may be the effect on the South, it can have equal and devastating effect on all the Nation, and I think that some of these people who are here and so anxious for political purposes to foster upon the law this sort of legislation will live to reap the destruction that it is bound to bring.

Thank you very kindly, Senator.

Senator JOHNSTON. Thank you.

Thomas H. Pope, attorney at law, representing the South Carolina Bar Association.

By the way, I believe I see the Governor of Mississippi back there, is that right, Governor Coleman?

Governor, we are certainly glad to see you with us today and I understand you will testify tomorrow.

Governor COLEMAN. That is right, Mr. Chairman.

STATEMENT OF THOMAS H. POPE, ATTORNEY AT LAW, NEWBERRY, S. C.

Mr. POPE. Mr. Chairman and gentlemen of the committee, I am Thomas H. Pope of Newberry, S. C., am chairman of the executive committee of the South Carolina Bar Association, spokesman of the South Carolina Bar Association and representative of Governor Timmerman here today.

If the committee has no objection, I should prefer to stand while I make my brief remarks.

Senator JOHNSTON. You say sit down if you would like to or stand, any way you want.

Mr. POPE. Thank you.

Mr. Chairman, the South Carolina Bar Association is opposed to this proposed civil-rights legislation for four reasons.

First, we believe that the proposed legislation is violative of the spirit and letter of the United Staes Constitution.

Secondly, we believe that the proposed legislation is entirely unnecessary in view of the existing State and Federal statutes. Thirdly, we believe that the proposed legislation is unwise, and fourthly, we believe that the proposed legislation is an unwarranted extension of Federal jurisdiction, and an unwarranted extension of the Federal octopus which is attempting to reach out and engulf all of the rights of the States and of the people.

I say in all humility, Mr. Chairman, that I believe this legislation is born of a desire and a belief on the part of certain politicians who think that the people in the local communities are not to be trusted, and I will say to you, sir, as a representative of the only section of America whose government was ever foisted upon those people at the point of a Federal bayonet, the only people whose capital city was burned by an invading Army, the only people whose women were ordered, in an infamous order by Beast Butler, who was later an undistinguished Member of the United States Congress, that if they offered any resistance to the Federal troops in New Orleans, they would be treated as women of the streets.

I say that I speak to you here this morning as a representative of those people who tell you that the mistrust is mutual, and that the people, the little people, who believe in constitutional government, have begun to mistrust the Federal or Central Government.

We mistrust this Government because we believe that it is misusing its power, and it seems to me that it might not be amiss to look at one quotation from the Declaration of Independence.

We often see a certain portion of that preamble quoted, and I am proud to say that one of my ancestors signed that Declaration on behalf of the State of New Jersey.

I would like to just call the commitee's attention to the fact, and ask you to ask yourselves whether we have reached the point where a rhetorical question might well be phrased in similar language:

> The history of the present King of Great Britain is a history of repeated injuries and usurpation, all having in direct object the establishment of an absolute tyranny over these States.

Mr. Chairman, I wonder if we might not paraphrase that historic quotation today and ask whether or not if the present trend toward centralization is continued, whether we, the people of the States, will have any rights left or whether we will be at the absolute mercy of a tyrannous Central Government.

I want to tell you if I may, and I am going to try to be as brief and as succinct as possible, just why we oppose this proposed legislation, for the four reasons given.

Senator ERVIN. If you will read a little further down, you will see that one of the reasons Thomas Jefferson set out why we should sever our ties with England was the fact that the King was denying the colonists their right of trial by jury.

Mr. POPE. Yes, sir, and Senator Ervin, we have not quite reached the point where we are ready to sever our connection with the General Government, and God pray that that day will never come again.

As to the constitutionality, may I call the committee's attention first to the fact that in the original Constitution before the Bill of Rights was adopted, that in section 2 of article III it was provided that the trial of all crimes except in cases of impeachment, should be by trial by jury, and then later when the early Founding Fathers saw the necessity for guaranteeing the rights of the individual citizens by adopting a Bill of Rights in the fifth amendment to the Constitution it is provided that:

> No person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury.

As I read the proposed civil rights legislation, the fifth amendment would be violated. There would be no presentment or indictment of a grand jury because the Attorney General of the United States—and I want to say this advisedly, Mr. Chairman, I want to repeat a statement that I made before the House Judiciary Committee.

Ninety years ago the greatest enemy of constitutional government that this country has ever spawned was Thaddeus Stevens, the man who was more responsible than any other for foisting upon the people of the Southern States a government that was not responsible to those people. And I say that in the 90 years that have elapsed since Mr. Stevens represented his district in the Congress, that there has been no worse enemy in either the Republican or the Democratic Party than the present Attorney General of the United States.

I want to quote, if I may, at this junction, from a splendid address which was made by the attorney general of Virginia, Mr. J. Lindsay Almond, Jr., on February 26, in the House Judiciary hearing.

Among other things he said this about our Attorney General, and it is completely apropos in my opinion:

> Recognizing the sterility of logic in the reason first assigned the Attorney General comes forward with his real reason. I quote him: "I don't want to amend the criminal statute because the leading case (*Screws* v. *U. S.*) on the subject holds that in order to convict under the criminal statute you must prove a willful intent." This is tantamount to saying "I want to be in a position to harass and constrict for an unintentional and inadvertent violation."

And I think that that one sentence, when Attorney General Almond quoted the present Attorney General of the United States, shows clearly his desire to get around the constitutional mandate of the fifth amendment for presentment and indictment by grand jury.

And what does the sixth amendment say?

The sixth amendment says that—

in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense—

the very points which Senator Ervin has been writing out in his examination of the witnesses here this morning.

Then the seventh amendment provides that—

in suits at common law where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any court of the United States than according to the rules of the common law.

Then we come to the 10th amendment about which we hear very little these days except from those of us who still worship at the shrine of constitutional government as our ancestors knew and practiced it, and that 10th amendment provides 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.

Those are the constitutional provisions which, in my opinion, are being circumvented, if this legislation is enacted.

It is very easy to see why the circumvention is taking place in the way that it is being proposed. The present statute, section 3691 of title 18, United States Code, provides for jury trial of criminal contempt when the conduct also constitutes a criminal offense.

But in the saving clause at the end of that section, it is provided that right to trial by jury is not guaranteed when the offense, the contempt, is committed in the presence of the court or in the close proximity to the court or when the United States of America is a party to the action.

This is a very adroit scheme. I characterize it as that advisedly. It is a very adroit scheme whereby the right to trial by jury for criminal contempt will be denied to the people of the United States, and it will be denied under that saving clause because this legislation, Mr. Chairman, provides that the sanctity and the power and the majesty of the central Government of this Republic shall be the moving party and shall be the plaintiff in civil actions brought for offenses which have been committed or are about to be committed.

When that happens, there will be no right to trial by jury. There will be no right of confrontation. There will be no right of cross-examination and there will be no right that your case will be tried in the Federal district where you reside.

In addition to that, as Senator Ervin very learnedly pointed out this morning, by resorting to the injunctive procedure, the necessity for proving a person guilty beyond a reasonable doubt is negated.

The burden of proof will be shifted from the United States Government over to the defendant, who must prove his innocence by a preponderance or a greater weight of the testimony.

I say that if this civil-rights legislation is passed, the injunctive process will be prostituted and it will be distorted beyond all recognition.

Senator ERVIN. I wish to ask this question in this connection: when the original Constitution was drawn with the provision that the

Federal judiciary powers shall extend to actions at law and suits in equity, equity was not used at all in criminal proceedings, was it?

Mr. POPE. No, sir.

Senator ERVIN. And from your study of history with reference to the circumstances surrounding the adoption of the Constitution, I would like to ask you if it is not your opinion that the Constitution would never have been ratified if the persons who ratified it had thought that equity would ever be perverted from its historical function to enforce criminal laws.

Mr. POPE. Senator Ervin, I will go a step further. I agree with you, sir, that the Constitution would never have been ratified first if the Bill of Rights had not been proposed.

Secondly, that it would not have been ratified had the right to trial by jury in criminal actions not been included as the sixth amendment.

Thirdly, that it would not have been ratified had the right to trial by jury in suits in common law not been included.

Fourthly, that it would not have been ratified had the reserve powers not been held by the States or the people of the States, and lastly, that beyond any question, it would not have been ratified had our ancestors, yours and mine, been able to foresee the day when an Attorney General of the United States would propose to distort and to prostitute in injunctive process and to use it in lieu of criminal prosecution.

Now my second reason, Mr. Chairman, for opposing this legislation, is that it is entirely unnecessary. I would like to point out a few of the statutes of my State, with the committee's permission.

Article 1 of the South Carolina Constitution for 1895 enumerates the rights of its citizens, and it includes, among other guaranties, those of free elections, trial by jury, and universal manhood suffrage.

May I say, in order to set the record perfectly straight, that a far greater lawyer than I, Mr. Craydon, this morning inadvertently stated that suffrage was dependent in my State upon an interpretation of the Constitution.

In that he was in error. The suffrage in my State, in article III—if you will excuse me just 1 minute. I want to get the record clear.

Article II, Mr. Chairman, section 4, reads under subparagraph (d):

> Any person who shall apply for registration after January 1, 1898, if otherwise qualified, shall be registered provided that he can both read and write any section of this Constitution submitted to him by the registration officer—

a simple literacy test—

> or in the alternative if he can't read and write, can show that he owns and has paid all taxes collectible during the previous year on property in this State assessed at $300 or more.

So there is no interpretation requirement in my State. It is purely a literacy test. I would like to reiterate a fact that was mentioned this morning, that payment of a poll tax is not a prerequisite to voting in South Carolina. It used to be, but it was eliminated from our State constitution on the voluntary action of the people of South Carolina. So far as I know, there are only five States at the present time which require the proof of payment of a poll tax as a prerequisite to voting. That is no concern of this Congress, as I see it. If the people of Virginia and the other States which now require a poll tax wish to eliminate that, it is a matter for their own good judgment.

It is not up to me in South Carolina to tell people from Virginia or from Mississippi or other States what qualifications they should demand of their voters, and it is not only not my business, but I say that it is not the function and the business of this Congress.

Last week, Senator Ervin, you will be interested to know, that after I made a statement that in my opinion no citizen of New York had a vested right as to my voting or not voting in South Carolina, the 14th amendment was posed to me, the old catchall, and if you will read the 14th amendment you will see that the only thing it says and the only thing it can possibly be construed to mean insofar as voting is concerned is, first, that no citizen could be deprived of that right without due process of law, and secondly, that the Congress, after the illegal voting has occurred, has the right and the duty under the 14th amendment to reduce the voting strength of the Congress from that particular State.

But the 14th amendment does not put upon Congress any duty to police elections prior to their being held.

It simply puts a burden upon Congress or a duty upon Congress to take action if, in Congress' opinion, there has been illegal voting and it affected the result of the election.

Don't you agree with me in that, Senator Ervin?

Senator ERVIN. Yes.

Mr. POPE. Right, sir.

Now, may I say too, that as far as voting, if we take the civil rights as they come, as far as voting is concerned, any citizen of South Carolina who can read and write can vote, and I challenge anyone to come before this committee or to go anywhere else and say that he has been deprived of the right to register or the right to exercise his franchise in an election in South Carolina within recent years.

I wish that that same thing could be said about some of the other great States whose members are on this subcommittee.

I remember just a few years ago when we had a tremendous voting fraud scandal out in Kansas City when the Pendergast machine was broken up. Thank God, it did not happen in South Carolina.

Senator ERVIN. I might say that in that case the Attorney General of the United States, who was not the present one, held in substance that there was such grave doubt about the jurisdiction of the Federal Government in the matter that he would not let the FBI go in and make a free investigation.

Mr. POPE. Yes, sir. You can bank on the fact that that was not the present Attorney General.

I would like to ask you this, Senator, about the present Attorney General. If my memory is correct, there is a Federal statute which requires the Attorney General to assist the Governors of the various States in apprehending and returning to the respective States fugitives from justice who cross State lines, is there not?

Senator ERVIN. Yes.

Mr. POPE. We have a fugitive in the State of New York named Delaney, whose return to South Carolina was not requested of the Governor of New York, which would have been a futile gesture, but whose return was requested of the Attorney General under the United States act, and he refused to intervene. If he is so concerned over the civil rights of citizens, why isn't he equally concerned with carry-

ing out the laws which the Congress has passed in bygone years, and why isn't he willing to cooperate with State governments?

Governor Timmerman would like to know the answer to that also.

Now the second civil right after the voting right is freedom from lynching, I suppose you would say, and I am proud again that in South Carolina we have had since 1895 an article in our constitution which reads as follows—and which should be of some interest. In article VI, section 6, it is provided:

In the case of any prisoner lawfully in the charge, custody, or control of any officer, State, county, or municipal, being seized and taken from said officer through his negligence, permission, or connivance by a mob or other unlawful assemblage of persons, and at their hands suffering bodily violence or death, the said officer shall be deemed guilty of a misdemeanor, and upon true bill found, shall be deposed from his office pending his trial, and upon conviction shall forget his office and shall, unless pardoned by the Governor, be ineligible to hold any office of trust or profit within this State.

It shall be the duty of the prosecuting attorney, within whose circuit or county the offense may be committed, to forthwith institute a prosecution against said officer who shall be tried in such county in the same circuit other than the one in which the offense was committed as the attorney general may elect.

The fees and mileage of all material witnesses, both for the State and for the defendant, shall be paid by the State treasurer in such manner as may be provided by law, provided in all cases of lynching when death ensues, the county where such lynching takes place shall, without regard to the conduct of the officers, be liable in exemplary damages of not less than $20,000 to the legal representatives of the person lynched.

Provided further, That any county against which a judgment has been obtained for damages in any case of lynching shall have the right to recover the amount of said judgment from the parties engaged in said lynching in any court of competent jurisdiction.

Mr. Chairman and gentlemen, we also have a statute which supplements that constitutional mandate.

Senator ERVIN. If you will pardon me, I would like to say that from my study of the so-called antilynching laws of the country, I think that South Carolina has the strictest and severest antilynching law of any of the 48 States.

Mr. POPE. Thank you, sir. I was just coming to some of those provisions, which might be interesting to Senator Hruska who comes from another section and who might not be familiar with that.

In section 10–1961 of the code, which code provision supplements the constitutional requirement, it sets out again that:

In all cases of lynching when death ensues the county in which such lynching takes place shall, without regard to the conduct of the officers, be liable in exemplary damages of not less—

It did not put a ceiling—

of not less than $2,000.

Now, Mr. Chairman, in the case of *Kirkland* v. *Allendale*, reported in 128 South Carolina reports at page 541 and in volume 123, Southeastern Reports, at page 648.

The court upheld a verdict which had been directed by the trial judge against the county of Allendale, and the court, in doing so, said that article 6 of section 6 and code section 10–1961 should receive a liberal interpretation—

to the end that the remedy prescribed should not be denied in any case coming substantially within its entirety.

We hear a lot about South Carolina being a lawless place. In this particular case of *Kirkland* v. *Allendale County*, a white doctor, Dr. Walker, had been shot by a Negro in Allendale and killed. When the Negro assailant attempted to escape, Dr. Walker's nephew shot him in the leg. He received a severe wound and he bled profusely. The sheriff of that county took that Negro down to Gifford and put him on the train to take him to Columbia so that he would not be rescued or so that he would not be taken by a mob.

The mob entered the train in Fairfax and took him from the train. The question was, and it was a very real question, whether the wound that he had received prior to his being seized by the mob had caused his death or whether he had died from wounds received at the hands of the mob, and our court, speaking through Mr. Justice Marion, said that the language of the constitution in saying that whenever death ensues simply meant that when death came later than the actual seizing—and I know that you lawyers will agree that that is the most liberal interpretation that can possible be placed upon that case.

That case was decided in 1924, 30 years before the Supreme Court handed down its decision of May 17. It was decided in the same year that the late beloved Miss Kate would have hired a Negro assistant to help her in the schools of Laurens County.

I tell you, Mr. Chairman and gentlemen, I resent having South Carolina held up and pillored as a place of lawless elements.

We have the laws on the books that are designed to protect our citizens and they are being protected. The antilynching law which Senator Ervin mentioned is a model which could well be adopted by any State in the Union. It provides that when two or more people gather, they constitute a mob. It provides that if death ensues after a mob has seized a person, that they shall be punished by death unless mercy is recommended, in which case they shall serve not the 20 years proposed in your Federal antilynching law, but up to 40 years, which is the same punishment as given for the crime of burglary in my State.

Then it provides further that if death does not ensue, they shall be punished at hard labor for not less than 3 nor more than 20 years.

Mr. Chairman, about 10 days ago I read an act of a very unfortunate incident that happened in Boston, Mass.

It involved four white men who seized a Negro upon the streets of Boston and killed him in plain sight of the woman that he was with. The Associated Press reported that that was not called a lynching in Massachusetts. I tell you that had it occurred in South Carolina it would have been a lynching and it should have been called a lynching in Massachusetts or in South Carolina.

We do not stand up for violence in my State. We have not had a lynching in South Carolina since 1945. The Tuskegee Institute reports that there has not been a lynching in the South in 10 years, does it not?

I don't advocate, just because the State of Massachusetts in its wisdom does not see fit to pass an antilynching law, I don't advocate that the Congress should go in there and try to do by Federal legislation what the people of Massachusetts who in the old days burned witches, refuse to do now.

We also have a statute which deals with conspiracy against civil rights, Senator, and we call it a conspiracy against civil rights. We have 16–101, which reads as follows—and the language is remarkably like the language that some of your gentlemen are using in the Congress.

The only difference is that we have got a perfectly constitutional right to use it in the Code of South Carolina and you have not got any right to use it in the Federal statute:

If any two or more persons shall band or conspire together or go in disguise upon the public highway or upon the premises of another with intent to injure, oppress or violate the person or property of any citizen because of his political opinion or his expression or exercise of the same, or shall attempt by any means, measures or acts to hinder, prevent or obstruct any citizen in the free exercise and enjoyment of any right or privilege secured to him by the Constitution and laws of the United States or by the constitution and laws of this State, such persons shall be guilty of a felony and on conviction thereof be fined not less than $100 nor more than $2,000 or be imprisoned not less than six months or more than three years or both at the discretion of the court, and shall thereafter be ineligible to hold and disabled from holding any office of honor, trust or profit in this State.

We have companion legislation. Our statute books are replete with legislation which is designed to protect a person's civil rights.

In South Carolina today any citizen who feels that his civil rights have been violated can go into the State courts of South Carolina and sue the person who is attempting to oppress him.

Secondly, he can go into the criminal courts and swear out a warrant for such oppression.

Thirdly, he can go into the Federal courts and bring suit against the person who seeks to deprive him of his rights, and fourthly, he can go to the district attorney, either district attorney in South Carolina, and have a warrant sworn out which would be presented then in the form of a bill to a grand jury.

I say to you that it is completely unnecessary, in view of the State and Federal statutes, for this Congress to pass any additional statutes, even though it is being done in the holy name of civil rights, and although we know it is being done for the unholy purpose on the part of the Attorney General of the United States to circumvent the plain language of the Constitution.

With the chairman's permission, I would like to file this memorandum of the statutes of South Carolina and of the Federal statutes with the committee.

I have several copies.

Senator JOHNSTON. I was just going to ask if you had a copy for the record.

Mr. POPE. Well, I have got about six, Senator.

(The document is as follows:)

Article I of the South Carolina constitution for 1895 enumerates the rights of its citizens and includes among other guaranties those of free elections, trial by jury and universal manhood suffrage. Payment of a poll tax or any other tax is not a prerequisite to exercising the right to vote in South Carolina.

Section 6 of article VI of the State constitution reads as follows:

"Prisoner lynched through negligence of officer; penalty on officer; county liable for damages.

"In the case of any prisoner lawfully in the charge, custody or control of any officer, State, county, or municipal, being seized and taken from said officer through his negligence, permission, or connivance, by a mob or other unlawful assemblage of persons, and at their hands suffering bodily violence or death,

the said officer shall be deemed guilty of a misdemeanor, and, upon true bill found, shall be deposed from his office pending his trial, and upon conviction shall forfeit his office, and shall, unless pardoned by the Governor, be ineligible to told any office of trust or profit within this State. It shall be the duty of the prosecuting attorney within whose circuit or county the offense may be committed to forthwith institute a prosecution against said officer, who shall be tried in such county, in the same circuit, other than the one in which the offense was committed as the attorney general may elect. The fees and mileage of all material witnesses, both for the State and for the defense, shall be paid by the State treasurer, in such manner as may be provided by law: *Provided*, In all cases of lynching when death ensues, the county where such lynching takes place shall, without regard to the conduct of the officers, be liable in exemplary damages of not less than $2,000 to the legal representatives of the person lynched: *Provided, further*, That any county against which a judgment has been obtained for damages in any case of lynching shall have the right to recover the amount of said judgment from the parties engaged in said lynching in any court of competent jurisdiction."

Section 10–1961 supplements this constitutional guarantee and reads as follows:

"When county liable for damages for lynching.

"In all cases of lynching when death ensues the county in which such lynching takes place shall, without regard to the conduct of the officers, be liable in exemplary damages of not less than $2,000, to be recovered by action instituted in any court of competent jurisdiction by the legal representatives of the person lynched, and they are hereby authorized to institute such action for the recovery of such exemplary damages. A county against which a judgment has been obtained for damages in any case of lynching shall have the right to recover in any court of competent jurisdiction the amount of such judgment from the parties engaged in such lynching and is hereby authorized to institute such action."

Our Supreme Court has held that section 6 of article VI and code section 10–1961 should receive a liberal interpretation to the end that the remedy prescribed should not be denied in any case coming substantially within its spirit. *Kirkland* v. *Allendale County* (128 SC 541, 123 SE 648).

Title 16 of the Code of Laws of South Carolina for 1952 deals with crimes and offenses. Article 2 of chapter 2 defines lynching and provides for its punishment.

Section 16–57 provides that any act of violence inflicted by a mob upon the body of another person which results in death constitutes the crime of lynching in the first degree and is a felony. Any person found guilty of lynching in the first degree shall suffer death unless the jury shall recommend mercy, in which event the defendant shall be confined at hard labor in the State penitentiary for not less than 5 years nor more than 40 years.

Section 16–58 provides that any act of violence inflicted by a mob upon the body of another person and from which death does not result constitutes the crime of lynching in the second degree and is a felony. Any person found guilty of lynching in the second degree shall be confined at hard labor in the State penitentiary for not less than 3 nor more than 20 years.

Section 16–59 defines a mob as the assemblage of two or more persons, without color or authority of law, for the premeditated purpose and with the premeditated intent of committing an act of violence upon the person of another. Section 16–58.1 provides that all persons present as members of a mob when an act of violence is committed shall be presumed to have aided and abetted the crime and shall be guilty as principals.

Section 16–59.2 directs the sheriff of the county and the solicitor of the circuit where the crime occurs to act as speedily as possible in apprehending and identifying the members of the mob and bringing them to trial. Section 16–59.3 gives the solicitor summary power to conduct any investigation deemed necessary by him in order to apprehend the members of a mob and empowers him to subpena witnesses and to take testimony under oath, and section 16–59.4 provides that this article shall not be construed to relieve any member of any such mob from civil liability.

Article 1 of chapter 3 deals with conspiracy against civil rights. Section 16–101 reads as follows:

"Conspiracy against civil rights.

"If any two or more persons shall band or conspire together or go in disguise upon the public highway or upon the premises of another with intent to injure, oppress, or violate the person or property of any citizen because of his political opinion or his expression or exercise of the same or shall attempt by any means, measures, or acts to hinder, prevent, or obstruct any citizen in the free exercise

and enjoyment of any right or privilege secured to him by the Constitution and laws of the United States or by the Constitution and laws of this State such persons shall be guilty of a felony and, on conviction thereof, be fined not less than $100 nor more than $2,000 or be imprisoned not less than 6 months or more than 8 years, or both, at the discretion of the court, and shall thereafter be ineligible to hold, and disabled from holding, any office of honor, trust, or profit in this State."

Section 16–105 reads as follows:

"Penalty for hindering officers or rescuing prisoners.

"Any person who shall (*a*) hinder, prevent, or obstruct any officer or other person charged with the execution of any warrant or other process issued under the provisions of this article in arresting any person for whose apprehension such warrant or other process may have been issued, (*b*) rescue or attempt to rescue such person from the custody of the officer or person or persons lawfully assisting him, as aforesaid, (*c*) aid, abet, or assist any person so arrested, as aforesaid, directly or indirectly, to escape from the custody of the officer or person or persons assisting him, as aforesaid, or (*d*) harbor or conceal any person for whose arrest a warrant or other process shall have been issued, so as to prevent his discovery and arrest, after notice or knowledge of the fact of the issuing of such warrant or other process, shall, on conviction for any such offense, be subject to a fine of not less than $50 nor more than $1,000 or imprisonment for not less than 3 months nor more than 1 year, or both, at the discretion of the court having jurisdiction."

Section 16–1–2 provides that if in violating any of the provisions of sections 16–101 or 16–105 any other crime, misdemeanor, or felony shall be committed the offender or offenders shall, on conviction thereof, be subjected to such punishment for the same as is attached to such crime, misdeameanor, and felony by the existing laws of this State.

Section 16–103 requires any constable, magistrate, or sheriff, upon receipt of notice of an intention or attempt to destroy property or to collect a mob for that purpose, to take all legal means necessary for the protection of such property and in case of negligence or refusal to perform his duty, to be liable for the damage done to such property and to forfeit his commission upon his conviction. Section 16–104 requires all sheriffs, constables, and other officers who may be empowered to obey and execute all warrants issued under the provisions of the foregoing sections and provides, in case of refusal, for a fine of $500 to the use of the citizens deprived of the rights secured by the provisions of this article or for imprisonment in the county jail.

Section 16–106 permits persons injured to sue the county for damages to person or property and reads as follows:

Persons injured may sue county for damages to person or property.

"Any citizen who shall be hindered, prevented, or obstructed in the exercise of the rights and privileges secured to him by the Constitution and laws of the United States or by the constitution and laws of this State or shall be injured in his person or property because of his exercise of the same may claim and prosecute the county in which the offense shall be committed for any damages he shall sustain thereby and the county shall be responsible for the payment of such damages as the court may award, which shall be paid by the county treasurer of such county on a warrant drawn by the governing body thereof. Such warrant shall be drawn by the governing body as soon as a certified copy of the judgment roll is delivered to them for file in their office."

Section 16–107 provides for indemnity for property destroyed by a mob or riot by the county in which such property was situated. Section 16–108 denies recovery from the county where caused by the person's illegal conduct or failure to give notice of the intention or attempt to destroy his property if he has knowledge and sufficient time to do so.

Section 16–109 preserves the right of the injured person to recover full damages for any injury sustained from any and every person participating in such mob or riot.

Section 16–110 vests jurisdiction for these actions in the circuit courts of South Carolina.

Section 16–111 gives the governing body of the county against which damages shall be recovered the right to bring suit in the name of the county against any and all persons in any manner participating in such mob or riot and against any constable, sheriff, magistrate, or other officer charged with the maintenance of the public peace who may be liable, to neglect of duty, to the provisions of this article for the recovery of all damages, costs, and expenses incurred by the county.

Section 16–112 requires sheriffs, constables, and other officers to institute proceedings against every person violating the provisions of this article and to cause them to be arrested, imprisoned or bailed, as the case may require, for trial; and section 16–113 provides that any person, upon conviction of engaging in a riot, rout, or affray when no weapon was actually used and no wound inflicted shall be subject and liable for each offense to a fine or imprisonment.

Article 2 of this chapter prohibits in section 16–114 the wearing of masks upon the streets, highways, or public property of the State, while section 16–116 makes it unlawful for any person to place in a public place in the State a burning or flaming cross, real or simulated, and section 16–117 prescribes the penalty for such offense.

Congress has existing laws protecting the civil rights of all citizens. In section 241, title 18, United States Code, it is provided:

"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 language is remarkably similar to the South Carolina statute on the same subject.

Section 1983 provides a civil remedy to every person deprived of any rights, privileges, or immunities secured by the constitution and laws and section 1985 defines a conspiracy to interfere with civil rights and likewise affords a civil remedy for the recovery of damages occasioned by any injury or deprivation against any one or more of the conspirators.

Similarly, section 1986, title 42, United States Code provides a right of action against any person having power to prevent or aid in preventing the commission of the conspiracy who neglects or refuses to do so and, finally, section 1988, title 42, United States Code, provides for proceedings in vindication of civil rights.

It is, therefore, perfectly apparent from the foregoing that any person in South Carolina deprived of his civil rights has access, either to the State or to the Federal courts, on either the criminal or the civil side.

Mr. POPE. Now our next point—and I appreciate the fact that you have been sitting all day, but I have come about 500 miles to get something off my chest and I hope you gentlemen will let me do it.

Senator JOHNSTON. You go right ahead.

Mr. POPE. I would travel 5,000 if I thought that it would save for future years one vestige of the rights which now remain to us as individual citizens in America.

I say that the proposed legislation is unwise from the southern point of view for these reasons—and you will note that I am not basing my argument upon any racial question. I am here as a lawyer attempting to do my best to point out to the Congress the absolute futility and lack of necessity for this legislation.

I believe with all my heart that the passage of this present civil rights legislation will create racial tension where no tension exists today, and that it will increase the tension where some tension already exists, and I deplore that as an American who bared his chest on the field of battle just like you did, Mr. Chairman.

You and I have both fought for this Government of ours. We have followed the flag. But I tell you that the time has come when those of us who have made sacrifices for the central government must stand up and be counted or future generations will never know the blessings of liberty which you and I have enjoyed up to this moment.

I say that the second reason that they are unwise, these bills, is that they will break down the present fine relationship which exists

between the Federal Bureau of Investigation and the local law enforcement officers in South Carolina.

You know, those of you and all of you are lawyers, you know that our law enforcement officers cannot operate unless they can deal in a spirit of fair play and open discovery with each other.

The FBI would be powerless to come into South Carolina and obtain reliable information unless it could rely upon the sheriffs and officers in South Carolina, unless it could visit the chiefs of police of the various cities and unless it could call upon our very efficient State law enforcement division.

I am afraid that if my sheriff, for instance, feels that he is going to be singled out and haled in a summary manner, denied the right of confronting his witnesses, denied the right of being indicted by a grand jury, denied the right of being tried by a petit jury for an offense that some low-down scoundrel in my county might say that he was guilty of by post card or by telephone to the Attorney General's Gestapo that would infest the South, I tell you that law enforcement will break down.

My third reason is that I don't believe that we are going to be able to get highly intelligent, well-educated men to accept the jobs of school trustees, to accept the jobs of law enforcement officers, to accept the other administrative jobs that might conceivably be haled into court in a summary manner under this proposed legislation.

The men that we want to run our schools are not the men who want the job. The men we want to run our schools and to see that both the white and the Negro races have their standards of living raised, and that their educational opportunities are increased are the men who are busy and who are civic leaders and who have little time to devote but who, from a sense of civil necessity, are willing to devote themselves to the onerous and thankless jobs of serving as school trustees.

I know and you know that they will not continue to do so if they are having the hammer hanging over their heads or the sickle which reminds me of Communist Russia.

And there is another thing. We talk about the FEPC, and I notice that in part of this mass of legislation here that that is proposed again. It is like Banquo's ghost, it will not down.

The FEPC, the Senator—Senator Thurmond called it the other day very aptly the "forced equality practice act or the Forced Employment Practice Act."

Well, you are going to have a lot of trouble if the time comes that I must hire a stenographer in a small country town, irrespective of her race, irrespective of her religion, irrespective of her looks, if I have got to take someone who is sent to me by a Federal employment agency just because she is the next one on the list, then I will quit practicing law if I have to.

If I don't want a cross-eyed woman working for me, I don't have to take her. If I don't want a redheaded woman working for me, I don't have to take her. If I don't want a colored woman sitting in my office, I don't have to hire her.

This is still America, and there are going to be numerous instances, I warn you, of people who will rise up and simply refuse to buckle under to FEPC law.

If my wife wants to fire our Negro cook because she is dishonest, and then later on have that cook write a post card or send word through the

local chapter of the NAACP that Mrs. Pope fired her because she was a Negro, we are in a sad state of affairs. I would just about as soon live in Russia as live under that system.

And while I am on the subject of Russia, let me say this: They tell you gentlemen in Congress that the reason you must pass civil rights legislation is because the Russians are using that propaganda against us throughout the world, and that we have got to be good boys and knuckle under and pass this type of legislation so that we won't be talked about.

Now I am just a country lawyer and I hold no public office, but I have got sense enough to know that we have not bought a single friend among the nations of the world since World War II. We are not going to buy friends by adopting the things that the Communists themselves would enforce if they got in power in this country, and I believe that the time has come to repudiate that specious argument that we have got to do this and we have got to do that in order to appear at an advantage to the Communist overseas.

The Communists are largely responsible for engineering this type of legislation, and I don't mean that against any Senator whose name appears on the bills. I am not discussing it personally. But they been waging a campaign for many years in this country, and if I am correctly informed, the NAACP is on the subversive list or used to be under a former Attorney General, isn't that correct, Senator?

Senator ERVIN. Not that I know of.

Mr. POPE. Well, then I withdraw the statement, because I have read that it had been.

Senator JOHNSTON. I don't believe so.

Mr. POPE. I withdraw the statement that it has, and I make this statement in its stead. I do not belong to the Ku Klux Klan and I do not belong to the NAACP. Both of those groups are extremists. They are on the fringes. One is at the extreme left and the other is at the extreme right. I am here this afternoon speaking as a moderate South Carolinian who respects the dignity of the individual being, whether he is white or black, and I am here as a lawyer who has sworn on the altar of Almighty God to go into court and do my best to protect the interests of my clients, whether they are white or black, and I have done that for nigh onto 20 years, and I have represented just as many Negroes as I have white people, and more in the criminal court.

I tell you that this type of legislation is wrong, and if we are going to adopt the Russian methods, we might as well break down the entire Constitution of the United States at one fell swoop as to let the termites get in, in the form of the civil rights bills that will take away the rights of the individual citizens.

My last statement is that it is an unwarranted extension of Federal jurisdiction, and I believe that it is.

Senator ERVIN. There is something up here they call Potomac fever.

Mr. POPE. Yes, sir.

Senator ERVIN. It is a strange disease. If a man gets elected to the Senate or to the House, and contracts Potomac fever, he introduces or supports bills which are predicated on the theory that the folks who sent him up here are not capable of running their own affairs.

Mr. POPE. I did not know you called that Potomac fever, sir, but I am glad to get that expression because that is what a former chief justice of South Carolina and I were discussing last week.

We did not know that it was Potomac fever, but we recognized all of the symptoms of that malady, Senator Ervin.

It seems to me, as I said a few minutes ago, that the minute a man comes down to Washington or up to Washington, he immediately begins to distrust the capacity and the competence of the people back in his home State and his home district to govern themselves, and that distrust is mutual, and it is working up every day.

As I said too, this legislation in a shortsighted way is aimed at the South. We all recognize that. But in the long-range view, Senators, this legislation is not going to hurt the South any more than it is going to hurt the Midwest or the Far West or the East.

Ultimately it is going to destroy the kind of government that our forefathers established on this continent, because it is going to mean that the Constitution is not, as we were taught to believe, the protector and the defender of the minorities.

It is going to be used as an instrument in favor of a majority in a reckless, heedless way to cut off the heads of those of us who dared stand up and disagree with the present philosophy of legislation by the courts, and the passage of unconstitutional legislation by the Congress.

I think you very much for letting me come here and speak to you today.

As I said, I am here as the spokesman of the South Carolina Bar Association. I am fearful of the rights of my children and of the rights of my children's children. I believe just as surely as I am standing here that if you continue to pass this kind of tomfool legislation, that the day will come when the right to trial by jury will be taken from all American citizens forever because the Government or those in power in the Government can think up at the spur of a moment. It is time to call a halt. The time is now. There is no necessity for passage of this legislation. If you will show me one instance of a person in South Carolina who will say that he has been deprived of his civil rights, I would like to know it. We have not had a single instance that has come to my attention.

We are a law-abiding people. We believe in constitutional government. We shall continue to believe in constitutional government long after the present Senators have passed from the American scene.

Senator ERVIN. I might state that the Attorney General cited my State as an instance justifying the passage of such legislation.

Mr. POPE. I always understood North Carolina was a model State.

Senator ERVIN. I stated at the time that I had never heard of any qualified person being denied the right to register and vote on account of his race or color.

Mr. POPE. Yes, sir.

Senator ERVIN. I live in the western part of North Carolina. It appears from the evidence before this subcommittee that during the primary registration in May 1956, some complaints to that effect were made in some of the eastern counties which are located anywhere from 230 to 300 miles from my home. The proponents of these bills offered evidence indicating that about 29 colored persons had been allegedly denied the right to register in those counties. I have not been able to check on all of these complaints. I have checked on as many as my time has permitted, and I have been advised by the State board of

elections that the complaints were handled in a satisfactory manner by administrative procedures within a few days.

But it does seem to me that even if you take it for granted that 29 people out of a population of 4 million, of whom approximately half are of voting age, had just cause to complain, it affords the poorest possible excuse for trying to establish a procedure by which the Attorney General can bypass every substantial constitutional safeguard erected by the Founding Fathers to protect the American people against bureaucratic and judicial tyranny.

Mr. POPE. Senator Ervin, it comes down to this, if you will excuse me, sir. With all due respect to everyone concerned, this civil rights legislation is sired by prejudice, it was conceived in ignorance and its birth will be unconstitutional.

Senator JOHNSTON. We certainly thank you, Tom, for coming before us.

Is there any other witness here today?

Mr. Albert W. Watson asked that I make this statement. He had to leave. He wanted to state that he concurred in the arguments presented against the enactment of the so-called civil rights bill.

I only wish that Congress would realize that these gentlemen are not speaking for South Carolina and the South alone, but for all Americans believing in constitutional government. Frankly the passage of this legislation and its consequences can bring but grief and sorrow to our Nation.

I want to state in closing the hearings for today that no civil rights legislation ever presented to Congress could be more dangerous than the bills now before us as endorsed by the Eisenhower administration and so-called liberals in Congress.

Nothing short of a police state in which the people will be stripped of their Bill of Rights will result if this so-called civil rights legislation is forced upon us.

I would like to call to your attention too that Hitler and Mussolini, when they wanted to get control of their governments, first acted along these lines.

Responsible forces in this country for political expediency are ignoring the principles upon which our constitutional form of government was founded and are exerting their influence to pressure for passage of these bills.

Naturally I shall do everything in my power to kill these bills both in the subcommittee, in the full committee, and upon the floor of the Senate of the United States.

I think the next meeting will be tomorrow at 10 o'clock. We will meet tomorrow at 10 o'clock in room 457, and the witnesses at that time will be the Honorable Richard L. Neuberger, United States Senator from Oregon; the Honorable James B. Coleman, Governor of the State of Mississippi, from Jackson, Miss.

I would like to also state that Mr. Coleman's family and people are from South Carolina up in Fairfield County near Jenkinsville, where my own whole sect was born and reared so I know him and know his people very well.

Do any of the Senators have anything to say?

Senator HRUSKA. I had a question or two of this last witness, Mr. Chairman.

Senator JOHNSTON. I did not want to cut you off.

Mr. POPE. Yes, sir.

Senator HRUSKA. I appreciate your interest, Mr. Chairman.

Senator ERVIN. Mr. Pope, you can sit down there if you want to.

Senator HRUSKA. I want to say first of all that this is not the first time I will have said that these hearings have been very helpful and educational, and today was no exception. I was particularly sorry, however, that I did not get here early enough to hear the testimony of our former colleague, Senator Wofford. I would very much like to have done so and I assure you, Senator, that I intend to read your statement and your testimony with a great deal of interest.

Mr. WOFFORD. Thank you, Senator.

Senator HRUSKA. I am gratified, however, that I got here in time to hear your testimony, sir. I was very interested in it, and especially the material you gave from the Constitution and the statutes of your State dealing with the subject at hand.

I was just wondering in view of your constitutional provisions, the very simple literacy test or the very simple taxpaying test, which is recited in the Constitution, and also of your statutes on that subject, what relative percentage of the white population votes and is registered and what percentage of the colored population votes and is registered.

Mr. POPE. Senator, we have a population of about 2 million of all ages. We have in the primary election some 400,000 votes cast. In the general election of 1952 there were in excess of 350,000, isn't that correct, Senator Johnston, and the statement was made after the 1952 election by the leaders of the NAACP that there were in excess of 120,000 Negroes registered in South Carolina, and as a matter of fact those same leaders claim that the State went for Mr. Stevenson in 1952 because of the Negro votes that were cast for the Democratic ticket, so there has not really been any discrimination of any kind in the voting in my State.

I would like to say that of the total number of people registered, the number of Negroes corresponds roughly to the percentage which the Negro population bears to the whole population of the State, about 40 percent.

Senator Hruska, excuse me, Mr. McNair reminds me that the South Carolina registration certificates do not contain any information as to sex or color or party. It is simply you can look at a registration certificate and you cannot tell whether it is issued to a white person or to a Negro, and you can look at the same certificate and you can't tell whether it is a man or a woman except for the Christian names that are involved.

Senator HRUSKA. But how are the figures arrived at then by way of percentage?

Mr. POPE. I am accepting the statement of the leaders of the Negro group in South Carolina who say that they have at least 120,000 registered Negroes in South Carolina, and they claim the credit, as I said, for swinging the State to the Stevenson ticket in 1952.

In 1956 they split their votes between the Republicans and the Democrats, and in one ward in Columbia, S. C., which is completely Negro and which casts a very large vote, the vote was surprisingly about 50–50 for the Republicans and the Democrats.

Senator HRUSKA. And that 120,000 of the colored voters is about what percent of the entire citizenry of that State?

Mr. POPE. I would say that 120,000 of them claim to have registered and voted out of a total vote of some 350,000 to 400,000, so that it roughly runs about the same percentage as the population bears.

Senator HRUSKA. Is that same true of other States?

Mr. POPE. I don't know, sir.

Senator HRUSKA. In the so-called South as we have heard it characterized?

Mr. POPE. Senator, I do not know a thing about any Southern State except South Carolina. I do believe that we have given you the facts and the law as they pertain to South Carolina.

I am not being discourteous in my answer, but I am not prepared to give the figures or the facts or the laws of North Carolina, Georgia, or any other Southern State.

Senator HRUSKA. That is fair and we have had other witnesses here who have testified in that regard.

Mr. POPE. Yes, sir.

Senator HRUSKA. And maybe that is the same answer, I will leave it up to you whether it is or not, whether or not other States are as well endowed with legislation such as that which you recited here as existing in your State.

Mr. POPE. I don't know, sir, but I believe this under my philosophy of government, Senator Hruska: that if South Carolina is fortunate enough to have the type legislation that we have on our statute book and is fortunate enough to have the provisions of our State constitution which protect the rights of all citizens, then I believe that we have no more intelligence and no less than the people of any other State, and it is a matter that should be left up to the people of Nebraska or the people of North Carolina or the people of Mississippi or Georgia to decide what they want in their constitutions and what they want on their statute books.

We submit that we are an enlightened people and we believe that the citizens of the other States are also.

Senator ERVIN. Senator, that is a very interesting question you asked about the percentages of voters of the two races. In North Carolina, we have 2,311,071 people of the age of 21 and upward. Of these, 1,761,330 are white, and 549,741 are nonwhite. Of the nonwhites, about 531,183 are Negroes, and about 18,558 are Indians and other non-Negroes—38,570 whites and about 35,000 Negroes admitted to the census takers that they had had no schooling whatever. If we take it for granted that these figures correctly represent all whites and Negroes in North Carolina who are unable to pass the literacy test, we reach the conclusion that the number of whites eligible to register and vote does not exceed 1,722,760, and that the number of Negroes eligible to register and vote does not exceed 496,183. North Carolina registration books do not disclose the names of registrants. Election officials of my State assert that there is no reliable way to ascertain with any degree of certainty how many whites and how many Negroes actually vote in primaries and elections. It has been estimated, however that about 150,000 Negroes voted in North Carolina in the last general election. But since about 346,183 Negroes of the age of 21 years and upward did not vote in the last general election, proponents of these bills want to infer that 346,183 qualified Negroes had been denied the right to vote on account of their race.

The untrustworthiness of such an inference appears when one realizes that the figures likewise show that at least 822,760 white people of the age of 21 years and upward, did not vote in the last general election.

Senator HRUSKA. How many was that, what was that figure?

Senator ERVIN. 822,760 white people, 21 years and upward, who did not vote in the last presidential election in North Carolina. Consequently, one can just as reasonably deduce from the figures that we do not allow white people to vote in North Carolina.

Indeed, one can just as reasonably infer from the figures that we discriminate more against white people, because 822,760 of them did not vote, whereas only about 346,183 of our colored people did not vote.

This shows how unreliable are inferences based on naked figures.

The truth is that in North Carolina as well as in many other States we have thousands of citizens, both white and Negro, who do not care to exercise the right of suffrage. Likewise, we have in most counties in North Carolina, as well as in most counties in Southern States, a one-party system: people do not make much effort to vote where they have just one ticket running for county officers. They do not come out. The whites do not come out, and the colored do not come out. And the reason we have a one-party system in North Carolina as well as in other Southern States is because 89 years ago Congress did the same kind of thing which this Congress is asked to do. It enacted so-called civil rights laws designed to give the Federal Government control of local affairs in the Southern States. Before that time we had two strong political parties, the Whigs and the Democrats in North Carolina. As a result of the original so-called civil-rights laws, we have a one-party South today.

And if this legislation is passed, we are likely to keep one-party government in the South throughout the foreseeable future. Our people do not believe in centralized government. I have pointed out that people do not bother to vote heavily in counties where a one-party system prevails. In my county, on the contrary, where the political parties are almost equally divided, we cast 19,500 votes out of a total population of 45,000 in the last election. I believe that record compares favorably with any in the Nation.

Mr. POPE. Senator Hruska, I couldn't answer you of my own knowledge a minute ago about how many of the States had laws that protected the right to vote. Mr. McCullough, of Senator Thurmond's office, advises me that the Library of Congress checked the point for his office, and that all 48 States have laws protecting the right of voters.

Senator HRUSKA. I do not pretend that now would be the time to get into that, but apparently there is some breakdown between some of the States as to the rights of which the laws are directed and the exercise of those rights, and we get into the area of intimidation and all sorts of things, and I appreciate this is not the time to get into that, because you have covered you own State situation very well.

I might say further, there have been several references here to "your antilynching bill." I do not know which of the Senators up here you have been looking at when you are describing the antilynching bill as "your bill," but I want to assure you that I am not a sponsor of that bill, nor am I in sympathy with it, so I will have to shift

that burden to my two colleagues up here to see if they will similarly disown that.

Mr. POPE. Senator, I could look at all three Senators present today and say none of you would offer that bill.

Senator HRUSKA. I just wanted to get the record straight up here so there will be no reflection on any of the members on this committee who are present.

Mr. POPE. Yes, sir. I knew you were not.

Senator JOHNSTON. As a Senator, I think we should make this statement: When we met and all seven of the subcommittee were present, and the question came up of whether or not you would even be heard or not, Senator Hruska voted—before they voted to continue these hearings, and he also voted not to cut off the debate the first time and on a certain limited date, if you will recall. So I want to say that he has——

Mr. POPE. Yes, sir.

Senator JOHNSTON (continuing). Voted with us on some of these matters.

Senator HRUSKA. Thank you very much, Mr. Chairman.

Senator ERVIN. To set the record straight, plead not guilty to being for any of these bills, because I think they are all going to rise up to curse both the white people and the colored people.

Senator JOHNSTON. Since I am the only one who has not answered, I certainly want to plead not guilty to that. [Laughter] So I do not know who is going to claim the bill.

I hope some others will feel the same way before we get through.

Mr. POPE. Yes, sir.

Senator HRUSKA. I hope, Mr. Pope, you will not construe my comment in that regard as too serious, because it was not meant so.

Mr. POPE. No, sir. I realize that.

Senator HRUSKA. Thank you again for coming.

I think you have made a real contribution here this afternoon.

Mr. POPE. Thank you very much for permitting us to come.

Senator JOHNSTON. Are there any other witnesses or any other questions?

If not, the committee is recessed until tomorrow.

(Whereupon, at 3:55 p. m., the subcommittee recessed, to reconvene at 10 a. m., Tuesday, March 5, 1957.)

CIVIL RIGHTS—1957

TUESDAY, MARCH 5, 1957

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

The subcommittee met, pursuant to recess, at 10:00 o'clock a. m., in room 457, Senate Office Building, Senator Sam Ervin presiding.

Present: Senators Ervin (presiding) and Hruska.

Also present: Charles H. Slayman, Jr., Chief Counsel, Constitutional Rights Subcommittee; and Robert Young, professional staff member, Judiciary Committee.

Senator ERVIN. The committee will come to order. I believe the first witness scheduled for this morning was Senator Neuberger, but I do not see him present. Therefore we will let Governor Coleman testify at this time if he is ready.

You may come up to this chair here, Governor, if you will.

The subcommittee at this time is glad to recognize Senator Eastland of Mississippi.

STATEMENT OF HON. JAMES O. EASTLAND, UNITED STATES SENATOR FROM THE STATE OF MISSISSIPPI

Senator EASTLAND. Mr. Chairman, Governor Coleman, the Governor of Mississippi, is the witness this morning.

Governor Coleman was a very able attorney general and is making a very fine record as Governor of the State of Mississippi. He has studied these bills and their effect at great length. I know he realizes what their actual practical effect will be.

It is an attempt for government by intimidation. I am sure that Governor Coleman will have a very fine and very helpful statement, statement that should be beneficial to the Congress in considering these far-reaching measures.

Senator ERVIN. The subcommittee is glad to recognize Senator John C. Stennis of Mississippi.

STATEMENT OF HON. JOHN C. STENNIS, UNITED STATES SENATOR FROM THE STATE OF MISSISSIPPI

Senator STENNIS. Mr. Chairman, I appreciate being here. I am not going to take your time except to say this: I am certainly pleased that the Governor is able to be here this morning and that this subcommittee and the Senate are going to get the benefit of his ideas on this far-reaching legislation.

The Attorney General appeared here before the subcommittee for these bills and he referred to the problem that the bills cover. I submit that the Governor of Mississippi knows as much about this real problem and its practical aspects as any witness who has been here.

With all deference he has more practical knowledge of it than many of them who have been here. He has, from years of experience in State government, a vast knowledge of the affairs and conditions in Mississippi and of the relationships between all segments and groups, of Mississippi's population. He is one of the leading authorities in this country on the racial problem as we in the South know it.

I am very glad to be here with him.

Senator ERVIN. The subcommittee appreciates the appearance of the two Senators from Mississippi before the subcommittee and we are glad to welcome Governor Coleman as a witness to give the subcommittee his views on this legislation.

STATEMENT OF HON. JAMES P. COLEMAN, GOVERNOR OF THE STATE OF MISSISSIPPI

Governor COLEMAN. Mr. Chairman, I am honored indeed to hear the kind and gracious remarks of our two United States Senators from the State of Mississippi, both of them most excellent in their service to Mississippi and in the esteem with which all of the people in Mississippi hold them.

It is a great honor to me to be introduced to this subcommittee by such distinguished gentlemen in such a gracious way. Also, I want to say that I am delighted to appear before a most able Chairman at present with whom I worked in Chicago for a couple of weeks last summer.

I learned there to highly appreciate the ability and the sincerity of the gentleman who is now presiding over these hearings.

Mr. Bruce Catton, a noted author, in an introduction to a book recently said "The Civil War was brought about by a succession of errors in which the whole country shared. The fearful price that was paid for it was exacted from the victors and the defeated alike."

As I appear before this distinguished subcommittee with reference to the proposed civil rights legislation now receiving consideration, I realize that we who live today are again witnesses to the repetitions of history.

In my considered judgement, this whole unhappy problem is being complicated and greatly worsened by a succession of errors, and the entire country will eventually pay the price. If any of this legislation or a substantial part of it should ever be enacted into law, it will create mistrust, it will breed confusion worse confounded and it will lose much of the valuable ground already gained toward the settlement of these problems.

The results of this legislation if ever enacted, like the results of the Civil War, will be a monument to the errors and to those who made those errors, a monument which future generations no doubt will devotedly wish had never been erected.

It it first suggested that we should have a so-called Commission on Civil Rights. It is obvious that this Commission can do nothing which is not already being done or could be done by the United States grand juries. Then the purpose of it must be to have the inquisitors

named not by well-defined and time-tested judicial process, but by the long arm of the executive reaching out from Washington, D. C.

It is suggested that six Commissioners be named. Obviously by this method 42 States would be wholly without representation on the Commission and would be subjected to the official actions of men who would be dealing only one-eighth of the time with people, facts, and conditions personally known to them in any State.

In other words, I may interpolate here that if this legislation is aimed at the South, and certainly it is in many respects, there are only 9 or 10 or 11 Southern States, but when this Commission is named, 42 States throughout the whole country will be without representation on its personnel.

A Commission appointed in Washington and operating from Washington at this late date reminds a southerner of those 10 years of reconstruction after the Civil War when there was no Marshall plan and no point 4 program for the South, but there were military rule and military commissions.

It reminds us of that evil day when citizens were tried by so-called commissions without the intervention of a jury and were sent to prison for however long and to whatever location best pleased the lord high repositors of that arbitrary authority.

These recollections are still vivid in the minds of our people, and the sponsors of this legislation are deluding themselves if they believe that this recollection can ever die. It is a page in history that cannot be eradicated and will not be forgotten. Indeed, some of the very wrongs which should have been avoided in the first 50 years after the Civil War were caused not by the war itself but by these acts of the United States Government immediately following the war. The eventual results of a Civil Rights Commission will be to educate the rest of the country to what we of the South have known all along.

If we are really and truly interested in the welfare of the Negro race, and I concede the good faith of the legislators associated with this unhappy enterprise, we will be careful not to put the Negro behind the barrier which this legislation will automatically erect.

I ask the Congress to mark my prediction that if these proposals become law, it will not be an aid to the Negro but it will be a continuing and continuous souce of agitation, uproar, tumult, and domestic discord, and the intended beneficiary will be its first victim.

Such Federal laws will be the chief fomenter and daily instigator of ill will between the races instead of doing good where good so badly needs to be done.

This will cause the employer of the Negro to dispense with that employment in an effort to avoid being called before the Civil Rights Commission or enjoined on account of real or fancied wrongs or grievances.

It will cause the whole South as a matter of prudent self-defense to have as little to do with the Negro race as possible in order to avoid the chance of being haled before this executive juggernaut conceived out of vengeance upon the South and instigated in the false premise of aid and assistance to the Negro race.

The proposal is noted that this Commission must file a report within 2 years and that it will therefore automatically then go out of existence. If the purpose of the Commission is simply to find facts, then

I respectifully put the question directly to the Congress: Why should Congress abdicate its own right, power and duty to find facts?

As a citizen, I read every day of investigations conducted by multiple committees and subcommittees of both branches of the Congress. Multiplied thousands upon thousands of dollars are spent by congressional committees and properly so in the search of facts upon which to base appropriate legislation.

The people are told that this is necessary and I agree. When impartial history shall come to be written, what can then be said in justification of the abdication by Congress of this right, power and duty to conduct its own investigations as the duly elected and chosen representatives of the people and ascertain the facts for itself.

The answer will have to be that it was done at the loud insistence of a minority within a minority for political reasons which backfired.

I would like to requote that statement. The answer will be that it was done at the loud insistence of a minority within a minority for political reasons which backfired. And then history will have to further record that those States against which it was intended were not intimidated or subjugated by the legislation. Rather ills theretofore not experienced by the unhappy and dissatisfied minority were thus brought upon themselves, and the extremely unhappy sequel of it all will be an automatic dispersion to other sections of the country which were then brought face to face with the problem they had intentionally fathered by remote control for others, and upon coming face to face with it, they will cry out for help which in previous years they had denied to others similarly situated.

Only yesterday I read a quotation from the great judge, Oliver Wendell Holmes, in which he said "Have faith and do the needful."

What this Nation needs today is leadership in communities, counties, States and in the National Government which will have both the courage and the vision to recognize the unalterable fact that legislation can neither add to nor subtract from the intrinsic worth of any man and that the solution to this problem is to be found at that place where the United States Government is least able to reach, to wit: The communities where the people live and which make up this great country. I make this statement about a proposed Commission on Civil Rights as the Governor of 1 of the 48 States, and I do it in the realization that my State in the past has often been chosen as a favorite whipping boy of those who try to use us for a scapegoat in order to raise a tiger.

I did not come here to indulge in a credibility match with the defamers of Mississippi. Their malice, their falsehoods and their tactics should be beneath the contempt of all true Americans and we of Mississippi spurn them for what they are.

The pity is that any State in its own Congress, in the House where it has the right to expect defense and protection, should have to be made the subject of such attacks.

I have been Governor of Mississippi since January 17, 1956, a matter of approximately 14 months. There has been no interracial violence in Mississippi in that 14 months and there have been no terror and intimidation.

I can give my solemn assurance to this subcommittee and to the Congress that such will be true during the remainder of my 4 years in office, libel and slander to the contrary notwithstanding.

Of course this objective will be the harder to achieve if this proposed civil-rights legislation should be enacted by the Congress. The responsibility for that, however, will clearly not be mine.

In 1954 in Mississippi we had 8 white people who were killed by Negroes, and only 6 Negroes who were killed by whites.

Senator ERVIN. Will you repeat that? I did not catch the figure.

Governor COLEMAN. In 1954 in Mississippi we had 8 white people who were killed by Negroes and only 6 Negroes who were killed by whites. 182 Negroes killed each other.

In 1955 we had 2 whites killed by Negroes, 4 Negroes killed by whites, and 159 Negroes killed each other.

In 1954 the ratio was 30 to 1. In 1955, it was 40 to 1, that is to say this comparison between the members of the Negro race killing each other and interracial killings.

May I be allowed respectfully to entertain some wonder about this day and time when the enlightened statesmanship of this country refuses to become concerned about this latter situation. The man does not exist who can point to attacks directed by me upon the Negro race. It would appeal, however, to the logical mind to inquire why all the fuss about the 1 while the 40 are wholly ignored.

The answer is, there is some national politics in the one, only heartbreak and economic loss are involved when Negroes kill each other.

In any event, I think I am entirely justified in the belief that the white people of Mississippi do not deserve a blanket indictment just because there were 4 Negroes killed by the whites in that State in 1955, while the Negroes were busily engaged killing 159 of their own number. Blessed is the politician who can strain valiantly at a gnat and swallow a camel.

There is absolutely no necessity for a Federal Civil Rights Commission. I predict that when it is set up it will be used not only to wave the bloody shirt against the South, but it will be turned on some of its most valiant sponsors.

In that latter event we can expect some justice from the legislation, but Congress will never be able to close the Pandora's box which it thus will have opened.

And may I insist that if there is a problem which needs the corrective action of Congress, someone has become greatly muddled in his logic when he attemps to concentrate his all upon the killing of a few and ignores the 159 who killed each other.

It is now proposed, however, that the Congress place its stamp of approval upon the idea of government by injunction. Trial by jury and similar civil rights of ancient origin and great respectability well loved by the true American, are to be discarded, if involved in race relations only.

Show me the man who is so naive as to believe that the right of trial by jury can be sacrificed in one particular and thereafter be maintained inviolate in all others.

Senator ERVIN. Governor, may I interrupt you at this point?

Governor COLEMAN. Yes, sir.

Senator ERVIN. Can you think of a single reason which would justify the abolition of trial by jury in civil-rights cases which would not apply with equal force to every other case where the right to trial by jury is enjoyed?

Governor COLEMAN. That is the case; that is the point. That is the trouble exactly. And if we abrogate it as to one, we are going to then be confronted with the argument it should be abrogated as to the others, and one of the rules is going to be that the United States district court will no longer really be a United States district court. It will be a civil-rights court if there is as much need for it as the proponents of this legislation say.

Senator ERVIN. I will ask you if the proposal to eliminate trial by jury in cases of this kind as well as any other areas of our life where it may be advocated is not dangerous for two reasons: First, that it is a repudiation of what is perhaps the basic protection devised by our Founding Fathers to protect people from judicial tyranny, and second, that it absolutely divorces administration of justice from the people and puts it in the hands of a professional class only, namely, lawyers, to the exclusion of every other citizen of this Nation.

Governor COLEMAN. Yes, sir; and more than that, it puts it in the hands of a person who is appointed by the President of the United States for a life tenure and whose place is beyond the reach of everybody except the Congress on articles of impeachment.

I ask the Congress this question: Is it supposed that you can enjoin the legislatures of the States from meeting?

Is it fancied that you can mandatorily enjoin said legislatures to enact or not to enact certain kinds of legislation?

Do you think the district courts can mandatorily join the governor of a State that he must approve or disapprove legislation that is submitted to him?

To ask the question is to provide the answer. All the force and compulsion of the harsh days of reconstruction, including widespread disfranchisement and the barefaced use of the United States Army, simply hardened the opposition. That is all it did. It will do no less in the years to come.

I suppose, however, that it will save the face and justify the dues paid to those who make trouble a source of financial advantage.

If we were willing to learn anything from history, we would take the steps necessary to avoid a repetition of unhappy events. I earnestly hope that the Congress will be willing to approach this problem in such a manner as to avoid such repetition.

In this connection, I again quote Mr. Catton on the Civil War when he says it was—

> a tragic example of the price a country can pay when both the leaders and the led become impatient with the virtues of compromise and political adjustments.

That is exactly what we are confronting here today in the good year 1957, a play-by-play re-play of the events from 1850 to 1875.

There is no violence in Mississippi. There is no violation of civil rights. If either did exist, the proposals here made would not be the remedy.

Senator ERVIN. Governor, I want to give you my interpretation of the so-called administration bill, S. 83, and ask you at the conclusion of the statement of my interpretation whether or not you agree with it as being a correct interpretation. Necessarily this statement will be somewhat protracted.

This is my interpretation of the salient features of the bill recommended to us by the Attorney General.

Despite any claims which may be made by any person to the contrary, the bill advocated by the Attorney General provides in substance that the temporary occupant of the Office of Attorney General of the United States, whoever he may be, shall have the absolute uncontrolled power at his election to sue in the name of the United States for injunctive relief for the benefit of private persons allegedly deprived of their so-called civil rights.

That injunctive relief by way of restraining orders, temporary injunctions or permanent injunctions may be granted in such suits without trial by jury in accord with equitable principles. That the restraining orders or temporary injunctions may be issued on the basis of verified pleadings or affidavits unless the judge in his discretion elects to take oral testimony. That injunctive relief is to be granted in such suits against supposed wrongs which are subject under existing law to private suits by the aggrieved individuals, and to criminal prosecutions by Federal attorneys, and that criminal contempts arising out of alleged violations of injunctive process issued in such suits are to be tried by a judge rather than by a jury.

Furthermore, the bill advocated by the Attorney General provides that the district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section, and shall exercise the same without regard to whether the party aggrieved shall have exhausted any administrative or other remedies that may be provided by law.

Thus it appears that the Attorney General is given in effect the power at his uncontrolled discretion to nullify in any particular case State laws prescribing administrative remedies even though such State laws may be enacted in strict conformity to the powers of States under State and Federal constitutions.

If history teaches us any lesson whatever, it is that no man is fit to be trusted with governmental powers of an unlimited nature.

I have charged, and I renew the charge, that no human being, including myself, is fit to be trusted with the unlimited governmental power which this bill would vest in the temporary occupant of the office of Attorney General.

The new remedies to be authorized by the bill can be granted or withheld at the uncontrolled discretion of the Attorney General who in effect nullifies valid State laws when he permits the use of the new remedies.

I have charged, and I renew my charge here, that this bill, if enacted into law, would empower the temporary occupant of the Office of Attorney General at his sole and uncontrolled discretion to bypass and circumvent all of the substantial safeguards established by the Founding Fathers to protect our citizens against bureaucratic and judicial tyranny. It would enable the Attorney General to bypass and circumvent the right of indictment by grand jury, the right of trial by petit jury, and the right to confront and cross-examine one's accusers.

I have not been able to find a single other statute of the United States which permits the Attorney General of the United States to seek injunctive relief of this character for private individuals, and I for one do not believe that we ought to alter the judicial system of the United States so as to permit the Attorney General to take sides in civil cases which are in effect solely for the vindication of the per-

sonal rights of individuals, and above all things, no Attorney General ought to be empowered, as he would be by the passage of this bill, to bring suits for the supposed benefit of individuals, without the consent or against the will of such individuals.

I will ask you if you think I have given a correct interpretation of S. 83 from the standpoint of legal interpretation?

Governor COLEMAN. Mr. Chairman, I have read both those bills, I believe, the unnumbered bill and then S. 83, too, and I certainly do agree with the analysis you have given, and I would like to say that when I proposed such an analysis, I have had the honor of serving as district attorney, as district judge, as a member of the supreme court of my State, as attorney general for 5 years, and I make that statement as a lawyer, sir. I agree with every word you said, and the people of this country will find it to be true if it is enacted into law.

Senator ERVIN. I would like to ask you this question: As a lawyer and as a student of American constitutional history, do you not believe that the rights which all Americans would lose by the passage of these so-called civil-rights bills are far more precious than any supposed advantages that any group of our citizens might obtain from such bills?

Governor COLEMAN. You are absolutely right about that. The pity is that it cannot be seen now. It will be seen in time to come, if this legislation is adopted; possibly too late.

Senator ERVIN. I will ask you if you agree with me in this observation: that our major political parties would not be caught with these so-called civil-rights bills in their pockets at the bottom of a coal mine at 12 o'clock midnight during a total eclipse of the moon while John L. Lewis and the United Mine Workers were on strike, if it were not for the supposition that the votes of our colored citizens can be exploited by the advocacy of these bills.

Governor COLEMAN. Of course, that is eminently correct. What I have been thinking about, Mr. Chairman, is that if these things should be enacted into law or attempted to be enacted into law, of course, their constitutionality will be challenged at every turn of the road, and great litigation will result from that. I think they are unconstitutional. I believe that when it comes right down to pinch, that the courts will have to say that they are unconstitutional.

But more than that, as I have attemped to say in my original remarks, the man that they are intended to benefit or that it is said they are intended to benefit, will find out that he has been the worst disillusioned man who ever lived in the United States of America. It just wont' turn out that way.

Senator ERVIN. Governor Coleman, of Mississippi, this is Senator Hruska, of Nebraska, a member of our subcommittee.

Governor COLEMAN. I saw him here yesterday.

Thank you very much, Mr. Chairman.

Senator ERVIN. The subcommittee is glad at this time to recognize Senator Richard Neuberger, of Oregon.

Senator STENNIS. Mr. Chairman, may I say just one word?

Mr. Chairman, I appeared before this subcommittee some 2 or 3 weeks ago, and I raised the point that in my humble estimation, and with all deference to the authors of this bill, that there were few if any of them that had practical knowledge of this problem as it exists

down at the county level where the people live, and I am sorry that there are not more members of the subcommittee here this morning to question the Governor of Mississippi, who is the chief executive of the State that has the largest percentage of colored people of any State in the Nation, and I believe with all deference to the others, as little so-called trouble as any of them.

I think this gentleman is an expert on the subject. He is a former district attorney, former judge, former member of the supreme court, former attorney general, and presently Governor, and I regret that this subcommittee, the sponsors of this bill, with all deference to them, who could not be here to cross-examine him, were unable to be here in person, could have sent questions that the counsel or the chairman might ask.

I believe the only way to get at the problem and the facts is to get the witnesses who live where the problem is and work there day by day.

I again thank the governor for coming before this committee.

Senator ERVIN. Senator Neuberger, I am sorry that you were not here when we started. Governor Coleman had come here at great inconvenience to himself. Consequently, I permitted him to proceed, knowing from my own experience that Senators are often prevented by circumstances beyond their control from getting to meetings on time.

The subcommittee is delighted to have you appear at this time, Senator Neuberger.

STATEMENT OF HON. RICHARD L. NEUBERGER, UNITED STATES SENATOR FROM THE STATE OF OREGON

Senator NEUBERGER. Thank you, Mr. Chairman. Had I been here I would have been very pleased to defer to the distinguished Governor of Mississippi, because I know he has had to make a far longer journey to appear before your committee than I have, so I neither request nor expect apology that he went on first.

Naturally, as I think you know, my viewpoint is somewhat different from his, but I am very pleased that the Governor of a great State of the Union has been here to give you his attitude on this legislation.

I would like to make very clear, however, whatever political motives may be behind my appearance before your committee and my interests in this legislation.

My State has a population of approximately 1,650,000 people. There are approximately 800,000 registered voters in my State, the State of Oregon where I was born and raised. Out of those 800,000 registered voters and out of the 1,650,000 people, there is a Negro population in the State of Oregon of approximately 16,000 to 18,000 people.

In other words, Mr. Chairman, only about 1 percent of the residents of our State are Negroes. Therefore, I am sure you will agree that if any political motives inspired me with respect to this legislation, it certainly could not be what might be called an aggressive bid for the so-called Negro vote, if indeed any such a vote does exist.

One of the main reasons that I favor this legislation, Mr. Chairman, is this: In the State of Oregon, both Mrs. Neuberger and I were members of the State legislature for a considerable number of years, she in the House of Representatives and I in the Oregon State Senate. There I was the sponsor of a fair employment practices bill in the State, and she and I together were joint sponsors of civil rights legislation at the State level.

Many of the same grim and forbidding predictions which are made concerning this proposed federal legislation in the field of civil rights were voiced then with respect to State legislation.

For example, it was said if fair employment practices legislation were adopted, that, (1), no Negro would ever, in the future, be employed, and (2), that if Negroes were employed, that stores would not be patronized.

It is obvious, as I have related to you, that we have a very small Negro population. It was said that if Negroes had to be hired as school teachers, that white students would refuse to go to school. It was claimed that if Negroes were employed as policemen, either as traffic policemen or in criminal divisions or as detectives, white people would refuse to obey the law if it were enforced by a colored man.

It was charged that if Negroes were employed by the fire department, people would have no faith in the protective devices and equipment and operation of the fire department. There is not a single reckless charge, or very sweeping charge, that could have been made agains' this legislation at the State level, which was not voiced.

I should like to say that Oregon now has had on the statute books both fair employment practices and civil rights for a considerable number of years. To my knowledge not one single one of these dire prophecies has ever materialized.

The success of the legislation has been such that it has ceased to be controversial. It was highly controversial at the time of enactment. Both bills originally met with failure in the State legislature. They later were adopted. There was a substantial minority who spoke and voted in opposition.

Today when appropriations are renewed for the division of State government charged with enforcing fair employment practices, those appropriations pass without controversy. To my knowledge, bills in our legislature under the State constitution may be passed only by roll call vote. To my knowledge there has never in recent years been one single vote, either from a Republican or a Democratic member of the legislature, against these appropriations.

I should like to cite further, when we discuss the history of prejudice in our country, that I come from a region where, in the beginning, prejudice existed not against Negroes but against the original owners of this continent.

In all the early annals of the West and of our State of Oregon, the basic prejudice and the basic problem of race relations was not between Negro and white but was between Indian and white. It has taken many, many years to end that prejudice.

I think that one of the reasons has been the effective Indian Affairs Bureau which we have had in the Federal Government. I think that we have to consider the fact that, in the early origins of the West there existed the saying and it was not merely a saying—it was put into practice—that the only good Indian was a dead Indian, and extreme injustices occurred and many dreadful deeds were perpetrated.

When we look at this prejudice now and we consider that it was against people from whom we wrested this great continent, it seems absurd, and yet it did exist and it had to be eliminated, and a good deal of it was eliminated by legislation.

For example, for many years there was law on the statute books of our State forbidding a mixed marriage between an Indian and a

white person. I was a member of the legislature when that bill was repealed. I think every single church group in our State, Protestant, Catholic, Jewish, every other possible sect, came down and urged the repeal of that law. It was repealed and I believe that the foundations of the State of Oregon still exist and are still in as firm a condition as ever. I realize that many of the Members of Congress from the South feel that they have a special problem. I rather imagine in the whole history of mankind when there have been tensions of one kind or another between races, regardless of the color or identity of the races, that they have felt that this was a special problem.

It is my opinion that eventually when civil rights legislation is passed—and I use "when" rather than "if", perhaps too hopefully, but still I use that term—it is my belief that there will be a great deal of relief from tension and anxiety not only in the South but in the Nation as a whole.

For those very brief reasons, Mr. Chairman, because I do not desire to presume upon your time too long, I urge that the pending civil rights legislation be enacted favorably by this committee.

Senator ERVIN. Senator, I would like to ask you if you place any value upon the right to trial by jury?

Senator NEUBERGER. Yes, I place a value on the right to trial by jury, except when I think conditions exist that may make a fair trial by jury if not impossible certainly improbable. I value trial by jury except under conditions where perhaps a juror might be subject to social or economic or even physical pressure if he took a certain position.

It is my view, Mr. Chairman, that the authors of this legislation are responsible people, that they would not have suggested some legal alternative to the method of trial by jury in these cases unless they felt that there was a state of tension and perhaps even hysteria which made a fair trial impossible under certain conditions.

Senator ERVIN. I speak for my own State because I am familiar with it. I have spent all of my adult life except during brief periods of service in legislative bodies in the administration of justice, either as a trial lawyer or as a trial judge or as an appellate judge, and I can safely say that any man or any group of people can get a fair trial before a jury in my State.

When the King of England set up the star chamber court, he abolished the right of trial by jury because he thought that the people to be tried were evil people bent on overthrowing his government and because he feared that juries might acquit them. He believed his government to be very meritorious, and that this was laudable and justified his drastic means. Our forefathers thought otherwise. Consequently, they inserted in the Constitution a guaranty that no man could be convicted of a criminal offense without a trial by jury. They also specified that in a case that constituted a felony indictment by grand jury was also necessary.

Do you know any justification for abolition of trial by jury in this particular field that could not be extended to a great many other fields?

Senator NEUBERGER. Mr. Chairman, your knowledge of the law is far more profound than mine. Your intimacy with the South is far more familiar than mine. I must confess, however, that merely as an observer and as a person who occasionally visits the South for a vacation or a speaking engagement, I have been disturbed to see resolutions highly critical of the United States Supreme Court passing

legislatures in the South unanimously. It is difficult for me to believe that in all the legislatures of great States in the South—diverse as every legislature must be, consisting of lawyers and laymen and farmers and city dwellers and men and women in all possible strata of humanity except perhaps colored people in those States—it is hard for me to believe that, unless there is a certain amount of social and economic and even physical pressure, that the legislature of a great State would agree unanimously to condemn the United States Supreme Court, unless there was something involved except merely the political issue at stake.

Now perhaps I misjudge, but that is just my interpretation of it.

Senator ERVIN. Suppose the President of the United States did an act which constituted a violation of his constitutional duties. Would you think that he could be justly subjected to criticism?

Senator NEUBERGER. Oh, definitely.

Senator ERVIN. Suppose Congress should pass legislation which was clearly unconstitutional.

Do you think that Congress would be justly subject to criticism?

Senator NEUBERGER. Certainly.

Senator ERVIN. Do you maintain that the Supreme Court of the United States or any other judicial tribunal is free from the fallibility which is inherent in all humanity?

Senator NEUBERGER. I think the Supreme Court or any other governmental institution is subject to criticism and is certainly as frail as humanity is frail, which is frail indeed. But I believe that the resolutions and legislation which has passed in certain Southern States and which set the governmental machinery of those States against the opinion of the Supreme Court in the school segregation cases certainly cannot be classified as mere criticism.

Let me take my own State as an example.

Some 2½ or 3 years ago in the case of the Pelton Dam decision, the United States Supreme Court ruled adversely to the State of Oregon with respect to a private utility dam on a great river with important fish migrations. I personally was bitterly opposed to that decision. I think it was the wrong decision. I know the majority opinion in the State of Oregon held it was the wrong decision, but the State legislature of the State of Oregon did not pass a resolution setting the governmental machinery of the State of Oregon against that decision.

In the State of Oregon that decision of the Supreme Court was obeyed implicitly, even though public opinion in the State of Oregon and governmental opinion in the State was overwhelmingly against it.

That is the contrast to what has happened in the South with respect to the school segregation decision.

Senator ERVIN. I presume that you are familiar with George Washington's Farewell Address to the American people?

Senator NEUBERGER. I have read it myself and I was in the chair presiding over the Senate during most of the time the other day, when it was read to the Senate.

Senator ERVIN. In his Farewell Address Washington pointed out the division of governmental powers made by the Constitution. He then made a statement to this effect: If the American people ever conclude that this distribution of governmental powers is wrong, let them change it by amendment in the manner specified in the Constitution itself to be changed.

Let no change be made by usurpation, for usurpation is the customary weapon by which free governments are destroyed.

Now with that promise, I would like to ask you whether you think that a person is not free to express his opinion of a decision of the Supreme Court of the United States when that person honestly believes on the basis of careful study that such decision constitutes an usurpation of power not possessed by the Supreme Court of the United States?

Senator NEUBERGER. I would say this: That many people in the State of Oregon would feel that the Supreme Court did not have the power to take a river wholly within the State of Oregon away from us and give it willy-nilly to a private utility company, but that the Supreme Court did this. And while they were critical of the decision, it will be obeyed implicity because they know that the Supreme Court, for better or for worse, is the only ultimate arbiter we have of the law of the land and of the Constitution of the United States.

Now I see no reason why a Supreme Court decision should not be criticized, and I would certainly be the first person to defend the right of any American to criticize a decision of the Supreme Court. But there is a vast schism and a wide gulf, Mr. Chairman, between criticizing a Supreme Court decision and not obeying it.

Senator ERVIN. Are you familiar with what Abraham Lincoln said about the Dred Scott decision, which was another case where the Supreme Court in my judgment made a pronouncement on racial matters which was unwarranted by the Constitution of the United States?

Senator NEUBERGER. I read a very able and scholarly article in the Washington Post last Sunday, I believe by Mr. Pusey, discussing the Dred Scott decision, and I read of the criticism of the Dred Scott decision. I think he discussed the alleged complicity of President Buchanan in the Court's ruling, and again I would uphold the right of a President or any other citizen to criticize a Supreme Court ruling.

But Mr. Chairman, this is the thing I am afraid of. Supposing the State of Oregon decided not to obey the Pelton Dam decision, and supposing the State of Utah decided not to obey a decision some years earlier dealing with the taxable liability of husband and wife in certain conditions—and this went on across the whole land?

Where would we be with respect to our whole structure of law and of orderly governmental procedure?

Senator ERVIN. The people who procured the Supreme Court decision in Brown v. Board of Education refusal to accept as valid the decision in Gong Lum v. Rice which was handed down in 1927 by a unanimous court, and the decision in Plessy v. Ferguson which was handed down in 1896. Each of these decisions was contrary to the decision in the Brown case.

Senator NEUBERGER. I would not deny any citizen the right to appeal to the Supreme Court to reverse a previous decision. But while that earlier decision is in effect, it must be obeyed.

I certainly think that the people who appealed to have those earlier verdicts reversed and changed, obeyed the rule of the Supreme Court and the law of the land while they were in effect.

I don't think anybody has suggested that they did not.

Senator ERVIN. I do not know of any case where any State has disobeyed any decision of the Supreme Court even in the school segregation cases.

Senator NEUBERGER. That would be a matter of interpretation between us, Mr. Chairman. I would not say that all Southern States can be said to have complied with the rulings.

Senator ERVIN. I would also say this: I am not aware of any statement of any Southern official, or any Southern legislature concerning the school segregation cases which went beyond the precedent set by Abraham Lincoln when he commented on the Dred Scott decision in his debate with Judge Douglas in 1858.

Now here is substantially what Abraham Lincoln said about the Dred Scott Decision:

> It is erroneous. It is contrary to such precedents as we have on the subject. I refuse to accept it as a rule of political conduct for the people or the agencies of the Federal Government—I will do everything within my power to secure its reversal.

And he added an additional statement to this effect:

> If I were a Member of Congress and a measure should come before that body to prohibit slavery in the territories, I would vote for such a measure notwithstanding the fact that the Supreme Court of the United States held in the Dred Scott decision that such measure would be unconstitutional.

Do you wish to make any comment on that?

Senator NEUBERGER. I would like to make a brief comment. There is no doubt that Mr. Lincoln was very vehemently and emphatically opposed to the Dred Scott decision. I still think that there is a difference between his comment and what the legislatures and governmental administrations of some of the States in the South have done, with respect to the school segregation case.

I realize that there is a profound feeling in the South about the whole matter of States rights on this question, and I understand that and I sympathize with it.

However, I feel that the question of States rights is something that is turned on and off like a water spigot.

For example, the people of New York, who comprise about 9 percent of the population of this country, pay over 20 percent of the taxes of this country. Those taxes are taken from them and they are spent for cotton parity payments in the South and the dredging of harbors in Oregon and many other benefits and improvements, and what I think are otherwise governmental policies, far from the State of New York.

It just seems to me that this whole matter of States right is something on which a great many of us perhaps, both hold with the hounds and run with the hare—as it suits best our particular ideas, or you might even say prejudices of the moment.

We all have prejudices. We are all perhaps governed by them, you and I and all the rest of mankind. But we have adopted a federal system of government in which the Federal Government finances many activities which formerly belonged to the States; it finances many new activities which are extremely popular in States where States rights are upheld. And I just believe, historically, that the Federal Government has a responsibility to protect the civil rights of its citizens, no matter where they are under the flag of the United States.

I think we would have been better off in the area where I live had that happened years and years ago.

I have read a great deal about western history, both north and south of the international border.

In the States of the Northwest there were the most dreadful kind of injustices and depredations against the Indians and the most terrible kind of maurading between Indian and white where we had local law enforcements by sheriffs and posses.

In 1874 Canada sent 375 men west charged with responsibility only to the Dominion Government at Ottawa. There was no telegraphic line. Their authority could not be changed. Commissioner McLeod, who headed that first group of Northwest Mounted Police, had just one mandate: to keep Indians from hurting white people and white people from hurting Indians.

I have recently read a book by Dr. Sharpe of the University of Minnesota, published by the University of Minnesota Press, on this whole subject, and he contrasts the utter lawlessness in the United States under local law enforcement with the vigilant adherence to law and order. He mentions the fact that Sitting Bull, the Indian chief who had wiped out Custer, fled to Canada with all his Indians, and how there was absolutely no violence between Sitting Bull and the Canadians north of the line because of their federal law enforcement, as compared with our local sheriffs and posses, many of whom were in league with white corrupt land rings that wanted to take over the Indians' lands and the Indians' resources. This created a chapter of eternal shame in the history of our country.

And so I believe that if the only way to secure protection for a minority group in our country, or any group in our country as long as they are under the flag of the United States, is with federal law enforcement, then I do not shrink from that.

We may disagree on that, but that is my viewpoint.

Senator ERVIN. Don't you know that we have sufficient statutes on the statute books already which, if applied, are capable of enforcing the civil rights of every citizen of the United States?

Senator NEUBERGER. That may be true. I just regret that they have not been applied. Perhaps, then, we need new methods of application, and that is what is proposed in this present legislation before your committee.

Senator ERVIN. Yes, it proposes to bypass and circumvent all of the constitutional safeguards erected to protect people against judicial tyranny.

Does not the provision of the Attorney General's bill establishing in these particular cases government by injunction disturb you any?

Senator NEUBERGER. It does not disturb me as much as the denial of basic human rights to thousands of American citizens.

Senator ERVIN. You are acting upon the assumption that thousands of American citizens are being deprived of basic human rights?

Senator NEUBERGER. Yes, I will go on that assumption. I go on that assumption when I see the comparatively small number of colored people who vote in certain States. I think that the basic right in this country was expressed by Thomas Jefferson, himself a southerner, years ago: "One man, one vote." It is obvious when you look at the vote totals in certain counties in some of the States that——

Senator ERVIN. For example, in my State we have 1,761,330 white persons who are eligible to vote, or at least are 21 years and upwards in age, and yet in normal times only 30 or 40 percent of these people vote in an off year.

Would not a person who desired to draw such inferences draw the inference from that fact that in North Carolina we denied white people the right to vote?

Senator NEUBERGER. No, I don't think so. I think in the first place there is no comparison between that and the percentage of the Negroes who vote in certain parts of the South. I do not think there is any comparison at all in those percentages.

Senator ERVIN. We do not classify people as white and colored on our registration and poll books. Consequently, it is difficult to get exact figures on this matter.

If we should accept as correct the figures of the executive secretary of the NAACP to the effect that 155,000 colored citizens of my State vote, we would have to come to the conclusion that there is not such a great discrepancy there between the percentage of white and colored persons who vote.

Senator NEUBERGER. I think you have noted in my remarks since I came before your committee, I have not referred specifically to any State nor do I intend to do so other than to say I was glad that the distinguished Governor of Mississippi was here with you today.

I realize that in North Carolina a great deal of progress has been made. North Carolina is to be commended for this. But from the figures which I have examined in certain States of the South, it is quite obvious that few of the colored citizens of those States, and certainly of certain counties and areas of those States, are using their right of franchise, which is guaranteed to them under our Constitution.

Senator ERVIN. Do you not concede that one of the great advantages of our system of government under the Constitution lies in the fact that we have a diversity of government and that by reason of this diversity, division of governmental powers between the Federal and State Governments, that State governments can be used in a sense for experiments which would be dangerous if tried on a national scale.

Senator NEUBERGER. Justice Brandeis made that point in a dissenting opinion that he wrote once with Justice Holmes, that the States were laboratories for new governmental experiments.

My State, for example, was a very useful laboratory. It was the first State to experiment with the initiative and referendum and with direct election of Senators, and since that time a good many of those innovations, particularly direct election of Senators, spread to every State, so I would agree with you on that.

Senator ERVIN. I might state I am glad you mentioned Justice Brandeis because he was one of my favorite jurists.

Are you familiar with the case of Gompers against the United States which is reported in the 233d United States Supreme Court Reports at page 604?

Senator NEUBERGER. I migh be familiar with it by subject, but I am not by name.

Senator ERVIN. Are you familiar with the long fight of labor to secure the right to trial by jury for persons allegedly violating injunctions issued in labor controversies?

Senator NEUBERGER. I am familiar with the struggle of labor with respect to injunctive process.

Senator ERVIN. The case of Gompers against United States to my mind is one of the illustrations of the danger of government by injunction which the Attorney General's bill would authorize.

The great labor leader Gompers was attached for contempt of court on account of matters growing out of a strike against Bucks Stove & Range Co. He was actually tried by a judge without a jury and sentenced to jail because he violated an injunction which prohibited him, among other things, from saying that the law did not compel persons to purchase stoves manufactured by this particular company. If it had not been for the fact that the Supreme Court held that his contempt proceeding was barred by the statute of limitations, Gompers would have had to go to jail for making statements of that character.

Senator NEUBERGER. Now that you call the case to my attention by topic, I am somewhat familiar with it, although of course not as much so as you, Mr. Chairman. However, I recognize with you labor's long struggle in the injunctive process. However, you have mentioned Mr. Lincoln today.

Mr. Lincoln's favorite poem was The Present Crisis by James Russell Lowell. One of the couplets in that poem runs something like this:

> New occasions teach new duties,
> Time makes ancient good uncouth.

I just feel, Mr. Chairman, that this is a unique, extraordinary and very troublesome situation in the history of our country with respect to the civil rights of colored people in certain States of the South, and I think that the Attorney General of the United States, any attorney general, Republican, Democrat, Independent, what have you, would not propose an alternative method of legal process to trial by jury unless he and his advisers felt that it was impossible under certain situations to secure a fair and untrammeled trial by jury.

You and I might not agree on that, but I think that is the situation.

Senator ERVIN. I am of the opinion that if we had to make a choice between some Americans suffering some injustices at the hands of some election officials and destroying for all Americans the basic rights to indictment by grand jury and trial by petit jury, it would be better for the injustices to be done than to strike down those ancient landmarks established by our forefathers to protect all our people against tyranny. Happily, however, we do not have to make any such choice. Despite intimidations to the contrary, in most areas of most all Southern States as well as throughout this Nation, people can get their civil rights vindicated in either State or Federal courts under existing procedures.

Senator, I want to thank you for appearing before our committee and giving us the benefit of your views on this subject.

Senator NEUBERGER. I want to thank you, Mr. Chairman.

I want to say it is a great privilege, although I might say a somewhat risky one, for somebody as inexperienced as myself to engage in colloquy with a distinguished former jurist and a very experienced governmental official like you; I have learned a great deal and I appreciate your courtesy.

Senator HRUSKA. Senator Neuberger, I appreciate you are not a lawyer. Not all people can be lawyers, but you are an elected representative of a Western State in the National Legislature and have studied a good deal of American history in school, college, and ever since then.

Don't you agree that under our system of government there has to be a final place of last resort, a court of last resort where many of these fundamental questions of constitutionality must necessarily be decided and the rest of the country has to sort of go along with that decision in spite of a lot of opposition or difference of opinion on it?

Senator NEUBERGER. I would think so, Senator Hruska.

Without that, I don't know how we would function. I would think that ultimately there had to be some one place under our political and judicial system where a decision is finally rendered on these matters, and that that, at least on earth, has to be final for the time being.

Senator HRUSKA. Again I appreciate you are not a lawyer, but we have had as one of the constitutional processes here in America for many years, and in fact it originated under the laws and under the decisions of England, a process whereby punishment for disobeying the order of a court is not something which is subject to trial by jury.

Civil contempt is not tried, it is not an offense which is triable by jury. To the extent that it also is a constitutional principle, would not you agree that it would fall within the purview of those things which should be upheld within the Constitution just as fully as the necessity of trial by jury in criminal cases?

Senator NEUBERGER. I would. I just want to point this out to you: It seems to me that in this whole matter of the Court's ruling and what has happened in the South, all we have to do is consider what would happen with other rulings of the Supreme Court if similar situations would develop, as has developed in the South in the legislatures, in the Governors' offices, in the offices of education, in school boards with respect to the school-segregation decision.

I think virtually our entire judicial system would collapse. I cited earlier I think before you came what would happen if the State of Oregon had set its will against the Pelton decision, which was highly unpopular in Oregon, and I am sure that you remember the Supreme Court's decision in the very complicated water case between Arizona and California over the Colorado River.

At least the State which was ruled against obeyed the ruling of the Supreme Court with respect to the divisions of the Colorado's waters, and I believe very fundamentally that when the Supreme Court makes a ruling, as long as that ruling is in effect, that it has to be obeyed, whether it is by a State of by individuals.

Senator HRUSKA. That is all, Mr. Chairman.

Senator ERVIN. I am at a loss to know now what ruling of the Supreme Court has been disobeyed by Southern States.

Mr. CLARENCE MITCHELL. Mr. Chairman, may I ask the Chair a question—identify myself for the record and ask a question?

Senator ERVIN. Yes.

Mr. MITCHELL. My name is Clarence Mitchell, director of the Washington Bureau of the National Association of Colored People.

We have submitted certain evidence concerning discrimination in some of the States to the committee. There has been a considerable amount of disagreement on whether it is true or untrue. I think there is one thing on which there could be no disagreement if the Chair would ask this question. We have submitted an exhibit from the Jackson Daily newspaper of Mississippi in which it is stated that the State of Mississippi appropriated $250,000 for the purpose of having a commission which would, as this article says, make inquiries on clandestine meetings of Negroes interested in getting integration.

The Governor of Mississippi is here and he made that statement. I think that if the Chair asks the question whether it is true and what are the purposes of that Commission, certainly there could be no dispute about that invasion of civil rights.

Senator NEUBERGER. Mr. Chairman, are you through with my part of the questioning?

Senator ERVIN. Yes.

Senator NEUBERGER. I want to say this: I have not brought up specific matters in Southern States, as I think you realize because I have tried to do it against the background of my own State and the situation there; I did not want to presume to come to you on matters of something on which you have far more knowledge than I have; and that is why my testimony has been confined to my own impressions of my own area.

Thank you again, Mr. Chairman.

Senator ERVIN. Frankly, Senator, my own opinion is, for whatever it may be worth, that there are in the South, just as there are in other areas of the country, places where some very unfortunate conditions have existed with respect to colored people, and I might add with respect to white people, but I think the conditions have been multiplied and magnified out of all proportion to the actual facts.

For example, it was blazoned all over this country that in one of the precincts in my State a colored man had been denied his right to register because he was lefthanded. Yet when I inquired into the matter I found that he not only was not denied the right to register because he was lefthanded, but that on the contrary, he was actually registered.

Thank you.

Senator NEUBERGER. Thank you, Mr. Chairman.

Senator ERVIN. I would like to offer in the record a telegram addressed to Governor J. P. Coleman by W. E. Cresswell, executive assistant to the Governor, dated March 4, 1957, reading as follows:

Official records Mississippi State Tax Commission reveal that G. T. Courts, of Belzoni, Miss., has never paid State income tax in any year. For the years 1947 through 1952 he filed no State income-tax returns at all. In 1953, he claimed a net income of $299.88, and in 1954, he claimed a net income of $357.51. He filed no return for 1955. His 1955 sales tax returns showed a volume of $5,592.70 for the first 11 months of the year. Under the statute this information can be released only upon order of the Governor and is done pursuant to your orders since this question was put in controversy before the Senate committee.

I will illustrate the magnification of alleged matters. This man, the Reverend Gus Courts, appeared before this committee and testified under oath that he was forced to flee from Mississippi leaving behind him a $15,000 a year business.

I would like to read into the record this statement, or maybe I can cut it short by asking this of Mr. Mitchell.

Mr. Mitchell, you appeared before the hearings of the Senate Judiciary Committee on S. 1 and S. 535, bills to establish commissions on civil rights in 1954, did you not?

STATEMENT OF CLARENCE MITCHELL, DIRECTOR, WASHINGTON BUREAU OF NAACP—Resumed

Mr. MITCHELL. Yes, sir, I did, Mr. Chairman.

Senator ERVIN. And you opposed the bills to establish those commissions on civil rights?

Mr. MITCHELL. Our position—I would certainly want to refresh my memory by reading the testimony before giving a final reply. Our position was this: At that time there was a discussion on whether a commission, which I believe Senator Dirksen's bill established, was something which would be acceptable in place of a Fair Employment Practice Commission with enforcement powers. Our position was that we did not consider a commission, which had no enforcement powers and no legislative base for operating on some of these basic problems, would be an acceptable alternative.

I do not believe it is entirely comparable to this Commission which is before the committee. This Commission is a purely temporary one set up to present information to the committee.

I would just like to say while I am here, Mr. Chairman, that I asked the Governor of Mississippi whether he would be willing to answer that question. He said he would be willing to answer the question.

Senator ERVIN. I looked and did not see Governor Coleman in the room when you made your statement.

Just one more question. I realize before you answer that you should see the statement. The record of the hearings purport to show that you made this statement among others:

> The chief concern of organization about S. 1 which would establish the Federal Commission on Civil Rights and S. 535 which has a similar objective, is that neither of these bills will effectively remedy the basic problems in the field of civil rights.
>
> They emphasize the study aspect of the problems in human relations rather than in actual program. In fairness to the members of this subcommittee I must tell you that the colored people of the United States are tired of being studied.

Do you want to look at that?

Mr. MITCHELL. I think that this is a very accurate reflection of our views, Mr. Chairman. We are tired of being studied. There is a more serious aspect that I want to submit to you and lay upon your heart. First however, I want to say in this open hearing while I certainly vigorously disagree with many, many things you have said, I think basically you have tried to give all sides a chance to be heard, and that is a wonderful demonstration of vitality of our Government. In further answer to your question, I would say this: For years in the South, one of the safety valves has been that our organization could say to people who were wronged, "If you do not get a remedy in the State courts, you have a remedy in the Federal courts and under the Federal system."

Again and again, we are discovering that because of the inadequacies of present laws, that remedies do not exist and the people do not get redress.

They are bitterly disillusioned. The virtue of this bill, as I see it, is that it purports, and I think, in fact will offer, some redress for the most pressing aspects of the problem. Also the Commission set up would undertake in a scientific and objective way to point out what further avenues may be explored.

In that sense, I don't believe it would be a program that anybody could be offended at.

Senator ERVIN. I am offended by the Attorney General's bill because I would never countenance depriving any American, white or colored, of such basic rights as the right to trial by jury, the right to confront and cross-examine one's accusers and the right to have adequate representation by counsel.

I consider those rights sacred. I would not relinquish them under any circumstances, and I would never advocate their being taken away from any other American.

Mr. MITCHELL. I would say, very respectfully, Mr. Chairman, that there was a contest between giants here the other day, the former justice of the supreme court of North Carolina and the Attorney General of the United States.

As an observer on the sidelines, I would say that if I were sitting in a jury and heard these two magnificent lawyers contest that issue, when I retired to the jury room I would be inclined to give the verdict to the Attorney General because I respectively submit, Mr. Chairman, that these questions which you have raised are not really a part of what we have to fear in the country.

I think the greater fear and the overriding consideration that ought to trouble everyone is the fact that, while we are engaged in very laudable excursions to all parts of the world for the purpose of defending democracy, there is a serious problem right here at home that we do not seem to have the means of correcting under present law.

Senator ERVIN. We are worried about what Russia does to liberty. Yet we are asked to pass laws which allow one man out of all the human beings in the universe, to determine whether we will strike down rights so basic that the founders of this country saw fit to enshrine them in the Constitution.

I want to say I appreciate the references to myself. I will say this: On yesterday I was glad to state that I had never heard of the NAACP being charged with being listed as a subversive organization by the Attorney General. I for one would stand and fight to the last ditch to see that the NAACP or any other organization shall enjoy the right to freedom of speech, even though I might disagree with their views or disapprove of their activities. One thing that worries me about the Attorney General's bill is that under government by injunction American citizens can be deprived of the right to freedom of speech.

I also want to say this: I appreciate the fact that you and I have been able to discuss these things upon which you and I are in irreconcilable disagreement without either one of us getting disagreeable about it.

Mr. MITCHELL. I want to say, Mr. Chairman, I am glad you mentioned the matter that arose yesterday. Immediately after the hearings yesterday I said to your secretary that I was grateful to you for your prompt statement. I think you share a position taken by Judge Parker in a case that we have defending the teachers of Elloree, S. C., who have been dismissed from their jobs because they are members of the NAACP. Judge Parker said approximately what you have said,

that while what we seek may be unpopular in certain areas, there is nothing to show that we are an organization that is doing anything unlawful.

Senator ERVIN. I go along with Judge Parker in defending the right of every American, white or colored, to join such organizations as he sees fit as long as such organizations are not engaged in illegal activities.

I think that whenever that right is denied to any group we are doing a serious thing to our basic rights. I think these bills of the Attorney General are doing serious injury to the basic rights of all Americans.

Governor Coleman, were you present and did you hear the question about the appropriation?

STATEMENT OF HON. JAMES P. COLEMAN, GOVERNOR OF THE STATE OF MISSISSIPPI—Resumed

Governor COLEMAN. I was not present, no, sir. I was talking to some men out in the corridor and I did not hear the question, but I will be happy to try to answer any question which the subcommittee may wish to propound to me.

Senator ERVIN. Suppose you restate it.

Mr. MITCHELL. I said, Governor, in your absence that there had been a considerable amount of disagreement between some of the members of the subcommittee and ourselves on some of the evidence that we had presented, but that there could be no disagreement on one thing which was published in the Jackson Daily News.

There was an article saying that $250,000 had been appropriated by the State of Mississippi for the purpose of establishing a State sovereignty commission. The article quoted you as saying that the Commission would make an effort to find out what was going on in clandestine meetings of Negroes who were trying to get integration, and it also said that paid informants would be hired to gather information on what Negroes were doing about integration in Mississippi.

Governor COLEMAN. I will state to the committee that the State of Mississippi does have such a State sovereignty commission. It does have an appropriation of $250,000. The sovereignty commission was established by an act of the legislature which I signed as Governor. The appropriation of $250,000 was approved by me as Governor. The purpose of that State sovereignty commission is to keep peace and quiet in our State, to keep down racial strife and hatred and trouble between the races, to try to avoid the occurrences that we unhappily have seen take place in other States.

Up to now we have not had any trouble whatsoever. There is a special necessity for that in the State of Mississippi in that 45 percent of our inhabitants are members of the Negro race. Fifty-five percent are members of the white race.

I was quoted in a magazine the other day as saying, and I was correctly quoted, that Clinton, Tenn., would look like a boil on the side of Mount Everest compared to what could happen in Mississippi if the tides of racial hatred and strife and prejudice and passions were to be unloosed in that State. I do not have a copy of my inaugural address here with me, Mr. Chairman, but when I was sworn in as Governor, I said to the people of the State of Mississippi on that occasion and to the world that Mississippi was going to be a State of

law and not of violence, that the real legal rights of all the people, white and Negro, were going to be respected under this administration.

I said furthermore that we were going to follow the teachings of Thomas Jefferson, to wit: that we would not do wrong just because our adversaries may have done so, but by setting the right example, we would try to lead them to do that which was right.

I furthermore quoted the verse from 2 Timothy to the effect that God had not given the people of Mississippi a spirit of fear but one of power and love and a sound mind and the willingness to do what is right.

Now nobody in the State of Mississippi can point out to one single instance where this State sovereignty commission has trespassed on the personnal rights of anybody.

As a matter of fact, the great claim down there is that the sovereignty commission has not been doing much. The point is it has not had much to do and that is the way we want it.

We prefer that it not have anything to do. But on the other hand, if the situation should arise with others raising money, with others having possibly the agents of the United States, why should not we have some money and why should not we have some agents, and why should not we meet the onslaught if it comes, as we no doubt will, praying, however, that it will be hereafter as it has been up to now, altogether peaceable and quiet.

Of course the State sovereignty commission is looked upon or attempted to be pictured as a machine or an engine of tyranny and oppression, but let me point this out. In 1954, before I was Governor of Mississippi, and as soon as this Supreme Court decision was handed down on the 17th day of June, the Governor then called a special session of the legislature and an amendment was proposed to the constitution which would abolish any public school if it were to be integrated.

That was submitted to the people and they ratified it at the polls and it is now a part of the constitution of the State of Mississippi. It is utterly legally impossible, it is legally impossible to integrate a school in the State of Mississippi.

If the United States Court were to order one integrated they would just be closed up and those who sought to have it integrated would be like Samson who pulled the temple down on his own head.

Senator ERVIN. Governor, Samson's foolish exploit is an apt illustration of the hazards in these bills. By reason of all this emotional agitation about racial matters, many Americans have lost in a large measure their sense of perspective, and like Samson are willing to destroy the constitutional safeguards of all our citizens to accomplish what they think ought to be accomplished in the name of civil rights.

Governor COLEMAN. If the chairman will permit me, and I am sure he will, I can give you an illustration of how this sovereignty commission works from an occurrence that took place yesterday in my State, and which my executive assistant told me about over the telephone last evening.

They had a young Negro man down in one county of the State who had been making threatening and abusive phone calls to certain people.

In the past in Mississippi that has been a sure-fire way to start bad trouble and to start it quickly. We believe from all the appearances that this Negro man must be insane actually. Well, what did we do? We sent the only investigator that the sovereignty commission has at

this time down there to make arrangements to have his lunacy checked into, and if he is insane, committed to the State hospital before we should have trouble in our State. I believe everybody will agree that that is a constructive proposition, and I can give you example after example of it.

Now so far as the schools in Mississippi are concerned, the average salary of a Negro school teacher in Mississippi in 1940 was about $175 a year. Now it is up to approximately $2,600 a year. Mississippi today is appropriating five times as much money for schools for the white and Negro children as it appropriated only 12 years ago.

Any State that has the economic problems that Mississippi has, which can multiply its educational appropriations 5 times over in 12 years, with the overwhelming majority of it going to the education of these Negro people, somebody must be conscious of their needs and desires and the benefit that they would be to our State if they were educated instead of uneducated.

Senator ERVIN. Thank you, Governor.

Mr. SLAYMAN. I have one question.

Senator ERVIN. Yes?

Mr. SLAYMAN. Governor, may I ask you a couple of questions about this State sovereignty commission?

Governor COLEMAN. Yes, sir.

Mr. SLAYMAN. This is a law and order commission, is that correct?

Governor COLEMAN. Well, the best evidence I guess would be the act itself which I do not have before me, but the purpose of it is stated in very broad and general terms, left up, however, to a commission composed of the Governor as chairman, and on that commission you have the Lieutenant Governor, you have the speaker of the house of representatives, you have 2 members of the house and 2 of the senate, and you have 3 citizens from the State at large appointed by the Governor.

In other words, it is drawn from the entire State, the purpose of course not being to concentrate the power or the authority to do something rash and wrong in a very few hands.

I might say even in the State of Mississippi, 1 of the 48 States, we have twice as many people on our sovereignty commission as they propose to put on this Civil Rights Commission for the whole United States.

Mr. SLAYMAN. Do they have other than investigative powers? Can they subpena witnesses?

Governor COLEMAN. They can but have not. They have not exercised the power of subpena?

Mr. SLAYMAN. But they do have the power of subpena?

Governor COLEMAN. Yes, they do have the power of subpena.

Mr. SLAYMAN. Of course you don't take sides in law and order If there were to be a revival of the Ku Klux Klan or of any such group of people, you would investigate them too?

Governor COLEMAN. Absolutely. I do not think we will have an revival of the Ku Klux Klan in Mississippi. We have not had it up until now. We have very stern statutes against what we call white-capping, going about with your face concealed and all that sort of thing, and there has been no movement to that effect up to this present time.

Of course the power of supena in this sovereignty commission is no more than the power that any legislative committee would have.

The only trouble is our legislature just sits once every 2 years. It is not constantly in session like most of the time the Congress of the United States is.

Mr. SLAYMAN. Mr. Chairman, with your permission—Governor, I think it would be helpful to the constitutional rights committee to have a copy of that statute.

Governor COLEMAN. I will be happy to furnish it and I might suggest that only last week Arkansas enacted a similar statute and possibly somebody could furnish that to you.

They copied it from our State sovereignty law in Mississippi.

Mr. SLAYMAN. Thank you very much.

Governor COLEMAN. Thank you.

Senator ERVIN. Governor, I would just like to say in this conection that, one of the things which disturbs me, especially in this area, is the appparent attitude of a lot of people that all of us must conform our thoughts to theirs.

I am told, for example, that I must not speak critically of the Supreme Court of the United States even though I believe from what I learned sitting at the feet of Eugene Wambaugh, a great constitutional lawyer from Ohio in the Harvard Law School, that the Supreme Court has departed many times in recent years from its proper role as a judicial tribunal. But I think that every American citizen, whatever may be his race or his creed, still has the right to think and to speak his honest thoughts concerning anything on the face of the earth, including the decisions of Supreme Court majorities.

I am frank to state that if we are to have government by injunction that that right is going to be seriously curtailed.

Governor COLEMAN. If I could comment on that, Mr. Chairman, I would like to say that I spent 4 years of my life as a trial judge on a court of general jurisdiction and then later was promoted to the supreme court of the State by appointment of the Governor.

I have never supposed that the official acts and deeds of a judge were beyond just criticism, and I would like to point out that in the last meeting of the National Governors Conference in Atlantic City, that we passed resolutions which could be considered of a critical nature, at least we looked with great concern on the decisions of the Supreme Court of the United States in such matters as the Pennsylvania case and others.

Senator ERVIN. I might add——

Governor COLEMAN. That was the governors conference—what it did.

Senator ERVIN. I might add that the Association of Chief Justices of the State Courts of the 48 States have done practically the same thing. They have passed a resolution asking Congress to enact a statute to end the absurd system sanctioned by the Supreme Court by which the lowest Federal courts nullify the decisions of the highest courts of the States. Consequently, those of us who may be critical of some of the actions of the Supreme Court in recent days find ourselves in the same boat with the chief justice of all of the State courts in America.

Governor COLEMAN. I have never made it my business to, you know, go out of my way just to criticize and heave rocks at the Supreme

Court of the United States, although I very definitely disagree with the correctness of their school decisions.

I have commented when I thought it was right and proper and my place to do so. I have made television speeches on the subject in Mississippi. At the same time we have this situation right now. We have a white man down in Mississippi, and we also have a Negro, both under conviction of murder. The convictions are about 4 years old. They have already been up to the Supreme Court of the United States twice, and only the other day when the hangman was seen to approach with his noose, they went over to the United States district court and applied for a writ of habeas corpus which was denied. They went down to the court of appeals and tried to get a certificate of probable cause which was denied, and then they came up here to Washington on the day before the execution, and when the State of Mississippi was not present and not notified and unheard, they gave a stay of execution.

That leads any man who has it in his mind to commit murder in my State, and both of these parties have been convicted of that, 1 white and 1 Negro, it gives them the idea that if they can get a smart enough lawyer who is possessed of sufficient dilatory equipment, that they can just whip the law forever, and they have done it for 4 years in these cases.

That is not said by way of criticism. It is just a statement of fact, and the results may speak for themselves.

Senator ERVIN. Illinois, North Carolina, and other States have had to pass statutes called post-conviction hearing acts, recently to satisfy recent decisions of the Supreme Court. These statutes provide, in substance, that after the State courts have tried the defendants, the defendants can try the State courts.

I would like to have incorporated in the record an article by David Lawrence, entitled "A Flagrant Abuse of Civil Rights," which appeared in the Washington Star for March 4, 1957, and an article which appeared in the U. S. News and World Report for December 1, 1955, entitled "FBI's Role in Mixed Schools."

(The documents are as follows:)

[Washington Evening Star, March 4, 1957]

DAVID LAWRENCE: A FLAGRANT ABUSE OF CIVIL RIGHTS

QUIET MOVE BY GOVERNMENT VIEWED AS IMPERILING JURY TRIAL GUARANTY

Maybe there is no need for civil rights legislation after all. Congress will certainly be interested to discover how the Department of Justice just a few days ago, in a move that has gone unnoticed generally, simply substituted the words "the United States" for the names of a local school board as a party to a law suit in Federal court. By that device the 18 defendants arrested for allegedly hindering the Federal injunction at Clinton, Tenn., can be deprived of a trial by jury and put in jail as unfairly as if they were living in some totalitarian country.

While the laws of the land under the Constitution of the United States do permit Federal judges to punish for contempt certain offenses committed in a courtroom, or even outside, when the principals to a controversy refuse to obey a court order, a jury trial can usually be obtained on request. But it is something novel when a lawsuit has been started by private parties to find the Department of Justice petitioning the Federal court to amend the original petition and substitute the words "United States" for those of the complainant. This automatically bars a jury trial.

If the Federal judge in Knoxville, Tenn., approves this request and it is sustained on appeal by the courts it will not be necessary for the Congress to legislate

on "civil rights." All that will be needed is for the Department of Justice to write out the orders and the courts will uphold them.

This is a flagrant abuse of power—much worse than any cited in the recent hearings before the House Judiciary Committee by the critics of the proposed "civil rights" legislation.

It is ironical that the American Civil Liberties Union—which on February 26 made a commendable statement criticizing the Federal court injunction issued at Clinton, Tenn., as being too broad—didn't know that on February 25 the same Federal judge was being asked by the Department of Justice to deprive citizens of a chance for jury trial. The Civil Liberties Union statement had rightly criticized the injunction as too broad and had said that "to the extent that it enjoins speech in opposition to or advocating ignoring of the order, or peaceful picketing for these purposes, it is invalid."

In that same statement, moreover, the right to jury trial was vigorously upheld by the ACLU even for those defendants who had been charged with actually "hindering" or "obstructing" the operations of a court order. The ACLU said:

"Under the Federal law a person in contempt of a Federal court order enjoining acts which are also in violation of the Federal or State law is entitled, if he requests it, to a trial by jury. This protection of individual rights was originally written into the law to guard against possible biased judicial decisions in labor injunction cases and now covers contempt issues.

"Similarly, as the acts charged against the 16 persons now facing trial allege violations of Federal and State laws, these defendants can ask for a jury trial. Therefore, no civil liberties issue is raised unless the jury trial is denied, which is unlikely in view of the clear instruction of the law."

But what the ACLU didn't know when it issued that statement, and what most people throughout the United States didn't know because it wasn't reported in the press generally, was that the Department of Justice had resorted to a stratagem by seeking to make the "United States" a party to the suit, which—according to a law of Congress governing contempt cases—eliminates trial by jury.

Some critics not long ago pointed to the case of John L. Lewis as a precedent because he was fined once for contempt by a judge and was not given a jury trial. But those same critics failed to notice that the United States itself was a party to the suit. This was because the Government, acting in accordance with a wartime statute, had seized the coal mines and hence any action taken by a union or its leaders to defy a court order was a defiance of the United States Government itself.

There is no such parallel here. The school board officials at Clinton, Tenn., were whole-heartedly complying with the desegregation order of the Federal court when they found certain persons in the town were "organizing a movement" to discourage attendance at an integrated school. Hence these school officials asked the court to enjoin anyone attempting to "interfere" with the school board's operations. But a local school board is not a part of the Government of the United States and it is difficult to imagine any Federal court judge consenting to the substitution of the "United States" for a local school board.

Even, however, if this strange petition does not win the approval of the court, the amazing thing is that anyone in the Department of Justice would try such a trick of circumvention in the very week when prominent lawyers from various States were warning Congress that to pass the civil rights legislation now being proposed would lead to grave abuses of power.

[U. S. News & World Report, December 21, 1956]

FBI's Role in Mixed Schools

Here's What Happened When Clinton, Tenn., Classes Reopened

High-school students in Clinton, Tenn., were called together in their school auditorium last week for this unusual procedure:

A county attorney read to the students an injunction issued by a Federal court.

Students were warned that they face Federal arrest if they violate that injunction.

Teachers were told to report to the FBI any violations by the students.

The county attorney said, "To my knowledge, in all of American history," such a procedure had never before been necessary.

Purpose of this procedure: to enforce racial integration of Clinton High School.

FBI Director J. Edgar Hoover said the instructions given Clinton students and teachers "were not issued at the request of the FBI nor would the FBI issue such instructions."

(Following is text of the proceedings of a general asembly at Clinton High School, Clinton, Tenn., held upon the reopening of the school, December 10, 1956:)

D. J. BRITTAIN (principal, Clinton High School). Students, this morning we are meeting for the first time since, I believe, Tuesday of last week, and we desire to have all situations cleared up so that there will not be any misunderstanding or confusion.

Now, naturally, there is and has been, as I told you at the beginning, world-wide interest in what is going on here in Clinton, Tenn. Therefore, there are a number of photographers here. * * * They wish to get pictures of the student body. When the lights come on, they are going to be real bright, and we hope that you will react normally. * * *

This program, the first part of it, will be taken of you. We want you to listen to what is said on the stage because it will be most important. * * * So we hope that you will pay attention to what is being said.

At this time, it is my pleasure—not my pleasure, either—it is my duty to introduce Mr. Eugene Joyce, who is the county attorney for Anderson County, so that we cannot have any misunderstandings about future things. Mr. Joyce. [Applause.]

Mr. JOYCE. Students, I am here this morning in my official capacity as county attorney for Anderson County. In that capacity I have been asked and directed by the board of education of this county to come before you and tell you what the board of education and what the faculty of this school expect of you in the future. It is not my intention to tell you what to think in the future, nor is it my intention to tell you what to believe in the future; but it is my duty to tell you how to act in the future so long as you remain students at Clinton High School.

During the past weeks, several acts of misconduct in this school have gone unpunished, acts that normally would call for severe and drastic action and, because things have changed now and because in the future these acts will be dealt with severely and swiftly, I have been asked by the board, in all fairness to you, to tell you exactly what to expect.

No one, believe me, no one wants to see any student here involved in any difficulty, and the board of education and the faculty—and it is a wonderful faculty—have done its best in the past to prevent that.

However, situations have developed to make this course no longer possible.

The board has directed the faculty to not only institute procedures through Mr. Brittain to expel any student that is guilty of misconduct, but they have also instructed the faculty to pass on to the Federal Bureau of Investigation any actions on behalf of the students that might be construed as violations of he injunction.

Now, I have here with me the injunction that so many of you have heard so much about. I want to read this document. It is a long, not very exciting, type of thing, but it is a very, very important instrument.

I is from the United States District Court of the Eastern District of Tennessee, Northern Division, signed by Judge Robert Taylor.

This injunction, in part, reads as follows:

"In this cause, it appearing from sworn petition [of D. J. Brittain, Jr., J. M. Burkhart, W. B. Lewallen, Sidney Davis and Walter E. Fischer] that John Kasper, Tom Carter, Max Stiles, Ted Hankins, Leo Bolton, and Mabel Currier, and others whose names are not known by the petitions at this time, are hindering, obstructing and interfering with the carrying out of a memorandum order issued by this court on January 4, 1956, in that, among other things, they have requested and urged the principal of Clinton High School and the members of the County School Board of Anderson County to refuse to carry out the aforesaid integration order of the court; that they have formed and caused to be formed picket lines in front of Clinton High School of Anderson County and on August 28 and 29, 1956, caused a large crowd to form near the entrance to Clinton High School, and threatened and caused to be threatened several of the Negro students attending said high school, causing them in a least one instance to become afraid

to attend school, and causing the parents of the students to become frightened and alarmed, one of whom caused a child to be removed from school; that anonymous letters have been written to parents of the students threatening them for permitting their children to attend school; that John Kasper has been one of the leaders in what appears to be a concerted movement to intimidate the parents, or some of them, who are sending their children to school, in an effort to prevent a continuation of school attendance; that on August 27, 1956, a crowd of people agitated by John Kasper attacked one of the Negro children of the school; that Kasper stated on various occasions that the court had no authority to issue the aforesaid order of desegregation in the Clinton High School, and that it should not be obeyed;

"It further appearing to the court that the unlawful conduct of Kasper and the other named parties herein will continue unless a restraining order is issued prohibiting such acts, words and conduct, and that, if continued, complainants will suffer immediate and irreparable injury, in that the Clinton High School will not continue to operate in an orderly manner and some of its students may suffer physical harm—"

And here is a key paragraph I want you to pay particular attention to—

"It is ordered and decreed by the court that the aforementioned persons, their agents, servants, representatives, attorneys, and all other persons who are acting or may act in concert with them, be and they hereby are enjoined and prohibited from further hindering, obstructing, or in anywise interfering with the carrying out of the aforesaid order of this court, or from picketing Clinton High School, either by words or acts or otherwise."

This document was signed by Judge Taylor and, as you all know, it has been an object and the instrument that has caused so much publicity and so much enforcement here in the last few years.

Questions have been asked of me and other law-enforcement officials as to the enforceability of this injunction. I think the actions of the past few weeks or the past few days, particularly, speak in unmistakable language that this injunction is enforceable.

The other question so frequently asked is: Will this injunction apply to students under 21 or to acts inside the high-school building? The answer is that this injunction has no limits; it applies to everyone, everywhere, be they minors, adults, inside or outside any building in this county.

Now, so that there will be no misunderstanding as to precisely what the board or education and what the faculty expect of you, I want to recount some of the acts of misconduct in the past that will not be tolerated by the board or the faculty in the future.

I have been told that there have been gatherings outside of the school over here [indicating] during the early hours of the morning when some students are coming to school. This will no longer be allowed. The throwing of ink on books, books belonging to the State of Tennessee, the messing up of lockers, the threatening notes to teachers, the filthy language to fellow students, pushing and shoving other stndents—and to avoid any difficulty of any type, I would suggest you students refrain from wearing any type of buttons or anything of that nature.

To my knowledge in all of American history it has never been necessary to read an instrument such as this, a Federal injunction, before an especially called assembly of a student body. And I want to say it certainly is not a pleasant task to me and not a pleasant assignment for me to be assigned to. On the other hand, I know it is a source of embarrassment to a great majority of the students in this assembly, students who have handled themselves and conducted themselves as model students and exemplary citizens during the difficult weeks in the past. To you students, the board of education has asked me to pass on a special word: They have asked me to tell you that they are grateful and they are gratified for your conduct.

While this is a matter of concern to you and embarrassment, we hope also that it will become a challenge to you; we hope that you will be challenged to assist the faculty, and so that soon we may return to normalcy.

With the act of assistance of everyone in this room, students together with the faculty, it is my fervent hope that within a few hours these grinding TV cameras, these lamps and lights will leave Clinton, that there will be no more misconduct, that the spotlight of public attention will remove itself from Clinton, and you students can return to a happy and carefree student life like you all so richly are entitled to.

I want to thank you for this opportunity to talk to you, but I do hope you folks will invite me back again on a more pleasant occasion, an occasion when maybe I can tell a few jokes and we all can have a good time together. [Loud, prolonged applause.]

Mr. BRITTAIN. The purpose of this was to make it perfectly clear where we all stand.

Now, then, we are starting a new period, and I hope that we can all forget our differences here in school, and we can go about this thing in an orderly manner. Our purpose is to educate you. We cannot do so unless you want to be educated. That is perfectly clear. We hope that you will go into this thing with that spirit.

Now, to get you out of here, I would like for someone to play. Do we have any students who want to play? Where are they? Here is a chance for you to appear on TV.

[Luke Clark, a senior, closed the assembly meeting with a medley of tunes on the piano. Whereupon, at 9:15 a. m., the meeting was concluded.]

Senator ERVIN. I would also like to put this in the record: On February 22, 1957 I sent to the Attorney General of the United States the following letter:

DEAR MR. ATTORNEY GENERAL: After you gave your testimony concerning the incidents in Court House Township precinct in Camden County, Bolivia precinct in Brunswick County, and Snow Hill precinct in Greene County, N. C., I contacted the North Carolina State Board of Elections and made inquiry concerning these incidents.

I was informed by the executive secretary of the North Carolina State Board of Elections that these instances were called to the attention of the North Carolina State Board of Elections by the field secretary of the NAACP in North Carolina, immediately after their alleged occurrence; that the North Carolina State Board of Elections immediately directed the chairman of the county boards of elections in Camden, Brunswick, and Greene Counties to investigate these complaints; that pursuant to such directions the chairman of the county boards of elections in these counties investigated the complaints and caused proper corrective action to be taken; and that no further complaints were made to the North Carolina State Board of Elections in respect to such precincts either in the primary election of 1956, when these complaints arose, or the general election of 1956.

When you made your statement before the Subcommitte on Constitutional Rights of the Senate Committee on the Judiciary, you stated that you based your statement concerning these three precincts on FBI reports. The purpose of this letter is to request that you review the FBI reports relating to these three precincts and advise me by letter whether such FBI reports contradict or corroborate the information given me by the executive secretary of the North Carolina State Board of Elections.

I mailed that letter to the Attorney General on February 22, 1957 and thus far have received no reply from the Attorney General. For that reason I desire to make this statement:

In presenting his prepared statement to the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, the Attorney General cited incidents in 3 of North Carolina's 2,400 precincts to justify his assertion that Congress should adopt his recommendations for legislation in the so-called civil rights field—legislation which would empower the Attorney General to strike down at his arbitrary discretion statutes of States prescribing administrative remedies in registration and voting matters.

The precincts mentioned by the Attorney General were Court House Township in Camden County, Bolivia Township in Brunswick County, and Snow Hill Township in Greene County.

The Attorney General based his statement as to the incidents in these precincts upon reports allegedly made by FBI agents to the Department of Justice.

Upon hearing the statement of the Attorney General, I contacted the office of the North Carolina State Board of Elections, which board, incidentally, is composed of 5 of North Carolina's finest citizens, 3 of them being Democrats and 2 being Republicans.

I have been advised by the executive secretary of the North Carolina State Board of Elections that the alleged incidents occurred in May 1956, in connection with registration for the 1956 primary; that the alleged incidents were called to the attention of the executive secretary of the North Carolina State Board of Elections by the field secretary for the NAACP; that the executive secretary of the North Carolina State Board of Elections immediately called upon the chairmen of the county boards of elections in the 3 counties including these precincts for investigation and action; that the chairmen of the country boards of elections in the 3 counties concerned investigated these alleged incidents and caused corrections conforming to law to be made in all cases where correction was required; and that no further complaint of any kind was received from anyone concerning the 3 precincts in question at any time thereafter.

If the information furnished me by the executive secretary of the North Carolina State Board of Elections be correct, then the situation of which the Attorney General made complaint on the basis of alleged FBI reports was corrected under State administrative laws within a few days after the incidents arose, and the incidents in question afford no factual foundation whatsoever for the assertion of the Attorney General that they justify the enactment of a law which will enable the Attorney General to strike down at his arbitrary discretion statutes prescribing State administrative remedies in such cases.

While the Attorney General was before the Subcommittee on Constitutional Rights, I requested him to make available to the subcommittee all of the data collected by the FBI in its investigation of these three incidents. I recognize that FBI reports should be kept confidential when the officials of the Department of Justice confine their use to their proper scope, namely, the determination of whether or not proceedings should be instituted against the persons who are the subjects of such reports. In my opinion, however, an official of the Department of Justice who gives his interpretation of FBI reports to a congressional committee for the purpose of inducing it to approve legislation advocated by him cannot justify withholding the original reports from the congressional committee in question. Such committee ought to inspect the original of such reports so that its members may determine for themselves the inferences rightfully to be drawn from such reports.

For this reason, I renew my request of the Attorney General that he present to the committee the full FBI reports relating to the incidents in these three North Carolina precincts.

The subcommittee is entitled to know whether the full FBI reports relating to these three precincts contradict or corroborate the information furnished me by the executive secretary of the North Carolina State Board of Elections to the effect that where needed correction was made in each of these precincts within a few days after the complaints arose by the North Carolina election officials under the administrative laws of North Carolina—laws which the Attorney General wishes to have the power to destroy at his election,

I just want to make one further observation.

When the Attorney General was testifying he stated in substance that perhaps there were statutes of the United States which authorized the Attorney General of the United States to institute suits similar in character to those which he would be authorized to institute by sections 3 and 4 of S. 83.

The Attorney General stated that he would attempt to point out such statutes to the subcommittee.

Since that time neither the Attorney General nor any other official of the Department of Justice has pointed out to the subcommittee any similar statutes whatever.

During such spare time as I have had at my disposal, I have attempted to find some such statute, and I have been unable to find any statute which reasonably approximates the provisions of the bill which the Attorney General recommends that Congress should enact into law. I believe that I have been unable to find any such statutes because no such statutes exist. I here and now challenge the Department of Justice to point out to this subcommittee, any statutes similar to the provisions which the Attorney General urges us to enact into law by adopting S. 83.

Is there any further statement by anybody?

Senator Thomas C. Hennings, the chairman of this subcommittee, has asked me to make the following announcement:

*** * * for public notice and for the record that the record will be kept open until noon eastern standard time, Friday, March 8, 1957, for the receipt of statements filed for printing in the record of these hearings.**

Senator Hennings advises me that he knows of at least two United States Senators who have prepared statements which they desire to insert in the record. I make this announcement of the fact that the record will be kept open until noon on Friday, March 8, 1957, so that any persons interested in the matter may govern themselves accordingly.

(The letter referred to is as follows:)

UNITED STATES SENATE,
DEMOCRATIC POLICY COMMITTEE,
March 5, 1957.

Hon. SAM. J. ERVIN, Jr.,
United States Senate,
Washington, D. C.

DEAR SAM: If I am not able to be present at the hearing of the Senate Judiciary Subcommittee on Constitutional Rights in room 457, Senate Office Building at 10 a. m., on Tuesday, March 5, 1957 (the last day for scheduled witnesses in current public hearings on pending civil rights legislation), I would appreciate it if you would announce for public notice and for the record that the record will be kept open until noon eastern standard time, Friday, March 8, 1957, for the receipt of statements filed for printing in the record of these hearings.

I know of at least two United States Senators who have prepared statements but have not submitted them to the subcommittee as yet, although I am quite sure the Senators desire to have these statements printed in our record. I am told this is true, also, for one or two Members of the United States House of Representatives.

Again I want to thank you, Sam, for your cooperation in holding these hearings and especially for your courtesy in acting as chairman at times I have not been able to be present due to the demands of other Senate duties.

Cordially yours,

THOMAS C. HENNINGS, Jr.
Chairman, Subcommittee on Constitutional Rights.

Mr. SLAYMAN. And we also hope we can receive this report from the Department of Justice.

Senator ERVIN. We also hope that we will receive any report that the Department of Justice may make in reference to any matters mentioned or any other matters the Department may wish to call our attention to.

Acting at the request of the American Civil Liberties Union, I ask that the following statement concerning the injunction issued in the school integration case at Clinton, Tenn., be printed in the record of the hearings on the civil rights bill.

(The statement referred to follows:)

PUBLIC STATEMENT ON LEGAL PROCEEDINGS ARISING FROM INTEGRATION CONFLICT IN CLINTON, TENN., BY AMERICAN CIVIL LIBERTIES UNION, NEW YORK, N. Y.

The conflict in Clinton, Tenn., concerning enforcement of the United States Supreme Court decision that segregation in public school education is unconstitutional has caused many persons to question whether civil liberties were violated.

The American Civil Liberties Union, a national nonpartisan organization, has been asked by the press, our members, and other people to comment on the legal developments from our special point of interest, civil liberties.

This analysis should be read against the following background:

(1) The ACLU believes that equality before the law is a vital part of our civil liberties structure and this constitutional guaranty should be fully observed. We support the Supreme Court's decision on school integration as constitutionally correct, and we urge all citizens to obey the Court's ruling; (2) the ACLU protects the civil liberties—free speech, due process and equality—of all Americans, regardless of their opinions. Our interest lies only in defense of civil liberties, not in the views or the philosophy of the individual or group whose rights may be under attack; (3) the ACLU does not believe in the use of force to achieve a social objective, and has never conceived civil liberties defense to embrace overt acts of violence. We abhor and condemn the use of force by those who oppose integration, in the original incident last fall and the more recent outbreak of bombings.

The Clinton, Tenn., problem originated with the Federal court order of January 4, 1956, that the Anderson County school authorities should integrate the high school by the fall of 1956, an order implementing the Supreme Court's decision. The school board complied with the order but opposition developed, centered around John Kaspar. When Kaspar and his followers sought to prevent the order from being carried out, the school board and law enforcement officials requested an injunction from the Federal court to enjoin interference with its order. Kaspar continued to defy the injunction, was cited for contempt of court and found guilty. He has appealed to the United States court of appeals, contesting the validity of the injunction itself and his contempt conviction. Subsequent to Kaspar's arrest and conviction, 16 other persons were arrested on a contempt charge for interfering with the injunction and are now free on bail awaiting trial.

Three major civil liberties questions have been raised by these events: (1) Does the injunction itself interfere with the rights of free speech and association; (2) can citizens who disagree with an injunction and oppose it be charged with contempt of court; (3) was the right to trial by jury denied in the contempt proceedings.

THE INJUNCTION

Before discussing the free speech aspects of the injunction, we emphasize our belief that the school officials charged with the responsibility for carrying out the Supreme Court's decision had the right and duty to seek aid from the Federal court when, in their opinion, they were prevented from discharging their responsibility. They were only complying with the law of the land, which must be upheld. Technical arguments that the request for injunctive relief should have been filed as a separate case, rather than as supplemental petition to *McSwain et al.* v. *County Board of Education*, in our view are without merit.

The petition for injunctive relief referred to "scurrilous literature," advo-

cating the ignoring of court orders, painting of signs, anonymous telephone calls, actively advising the crowd and urging disregard of the orders.

The injunction issued by Judge Robert Taylor enjoins Kaspar and five other persons, "their agents, servants, representatives, attorneys and all other persons who are acting or may act in concert with them * * * from further hindering, obstructing, or in any wise interfering with the carrying out of the aforesaid order of this Court, or from picketing Clinton High School, either by words or acts or otherwise."

The key section of the prohibition is "by words or acts or otherwise," and the acts prohibited are "hindering, obstructing, or in any wise interfering with the aforesaid order," and "picketing."

Before freedom of speech and association, guaranteed by the first amendment, can be curbed, it must be examined to see if it will directly cause an actual breach of the peace or if it will create a clear and present danger that the peace will be broken. This standard has guided the ACLU in other free speech cases far removed from the integration controversy, such as alleged subversion and mass picketing by labor unions and other groups.

We recognize that in tense social situations, it is difficult to determine exactly where the line of clear and present danger is, where speech goes outside the area of opinion and incites to violence. But the first amendment requires that such a line be drawn. For the sake of our free society, whose freedom is preserved by the free exchange of all kinds and shades of opinion, curbs on the first amendment guaranties should be allowed only when the danger is clear.

Mere advocacy, in the Clinton case urging the ignoring of the law or judicial orders, should not be prohibited. As we said at the beginning of this statement, the ACLU supports the Supreme Court decision and urges all citizens to obey it. But if some citizens choose to oppose the decision by peaceful means, through speech, they have the constitutional right to do so. Mere picketing to express a point of view, in the absence of intimidation, should not be enjoined. So we believe the blanket prohibition against picketing of the Clinton High School is invalid. Without direct incitement to definite acts of individual or joint obstructiveness or interference, coupled with a clear and present danger that these acts will take place immediately, the injunction is too broad and interferes with free speech.

However, the prohibition in the injunction as to overt acts of "hindering" or "obstructing" the integration order is different. Such overt acts cannot claim the protection of free speech. Whether or not such acts have occurred is a matter of proof to be determined at the contempt hearing. But because a contempt conviction can result in a criminal penalty, we believe the acts prohibited must be reasonably spelled out so that the persons enjoined will know in advance what they cannot do. We believe that this criterion can be applied to the acts of "hindering" or "obstructing," but not to acts of "otherwise interfering with" the court order.

The argument also has been advanced that the injunction is defective because it covers too wide a range of persons; for example, the reading of the injunction before the Clinton High School assembly by law enforcement officials was interpreted as applying the injunction to all of the students. We do not agree. While the officials had the right to point out what the law is, the injunction enjoins only persons "who are acting or may act in concert" with the persons specifically named. This activity is to be judged, by evidence, at the contempt hearing.

To sum up our conclusions concerning the injunction, we believe it is too broad in its scope to be constitutionally valid. To the extent that it enjoins overt acts of hindering and obstructing the enforcement of the integration order, it is valid. To the extent that it enjoins speech in opposition to or advocating ignoring of the order, or peaceful picketing for these purposes, it is invalid.

Contempt of Court Action

Under our democratic system of government the courts have an assigned role to interpret the law under which the people live. To fulfill this function, the authority of court decisions, the law, must be preserved, and the Congress by statute has laid down the procedure by which the Federal courts may punish contempt of its authority. For this reason a court injunction, the law, must be obeyed until its validity can be decided by higher courts, even though the individual or group believes the injunction is wrong. This principle is not new. It has been applied in many other situations, for example, in labor disputes

where union officials and members have been found guilty of contempt, fined and jailed for ignoring an injunction.

For those who disagree with an injunction, relief can be sought by appeal to the higher courts, and this is the proper way to proceed. This right of appeal was written in our statutes especially to give the individual an opportunity to argue his case at a higher level. And where time is important, provision was made for the individual to seek a stay of the injunction from an appellate court.

Despite the invalid sections of the injunction affecting free speech, we see no civil liberties issue in the contempt citation of John Kaspar and his subsequent conviction. This same legal principle would apply to the cases of the 16 persons now awaiting trial if the unrebutted proof shows that the prohibited acts were committed together with any of the persons specifically named in the injunction. However, what may be legally correct may also be unwise. If the injunction violates first amendment rights, then punishment for contempt of an invalid injunction seems unfair. We suggest that until the constitutionality of the injunction is decided by the courts, the trial of the 16 be postponed.

TRIAL BY JURY IN CONTEMPT PROCEEDINGS

Under the Federal law a person in contempt of a Federal court order enjoining acts which are also in violation of the Federal or State law is entitled, if he requests it, to a trial by jury. This protection of individual rights was originally written into the law to guard against possible biased judicial decisions in labor injunction cases and now covers all contempt issues.

As the contempt charge against John Kaspar concerned alleged acts of conspiracy to deprive other persons of their Federal civil rights (implementation of the integration order) and Tennessee laws barring violence or inciting to riot, he could have demanded and received a jury trial. But Kaspar failed to do this, so no civil liberties issue is involved in his decision to be tried by the judge.

Similarly, as the acts charged against the 16 persons now facing trial allege violation of federal and state laws, these defendants can ask for a jury trial. Therefore no civil liberties issue is raised unless the jury trial is denied, which is unlikely in view of the clear instruction of the law.

ACLU ACTION

1. If the question of constitutionality of the injunction reaches the United States Supreme Court level, the ACLU will then consider legal intervention to argue the points made in this statement.

2. When the trial of the 16 persons arrested for contempt of the injunction is held, we will have observers present to watch the proceedings. If it becomes necessary, we will consider arguing constitutional points in the appeal.

3. Since the problem of developing new techniques that will help to support the authority of the courts in integration cases is a major one, the ACLU will give increased attention to this question. Its attorneys will study the problem and try to create new approaches to uphold the courts' authority.

Senator ERVIN. Acting at the request of Senators Russell and Talmadge and Congressman Preston, of Georgia, I ask that the following affidavit be printed in the record of the hearings on the civil rights bills.

(The affidavit referred to follows:)

GEORGIA,
Burke County:

We, D. L. Stone, Sr., J. Fred Claxton, and J. C. Daniel, who constitute the board of registrars for Burke County, Ga., hereby depose and say on oath:

It has been brought to the attention of the undersigned that on February 28, 1957, one Austin T. Walden, a Negro lawyer from Atlanta, Ga., appeared before a subcommittee of the United States Senate which was holding hearings on proposed civil-rights legislation and testified to the effect that Negroes in rural sections of Georgia have been denied the right to vote, and he singled out Pierce and Burke Counties as areas in which Negroes have been denied the right to vote.

According to the news story appearing in the Atlanta Constitution for March 1, 1957, said Walden testified that in the immediate past: "Negroes have been driven out of the community, their homes fired into at night because of their

efforts to register and vote. Threats, intimidations, economic reprisals and cross burnings" have been used to intimidate them and prevent them from registering and voting.

This board feels that by singling out Burke County as an area where Negroes are denied the right to vote this Negro lawyer has, in effect, testified that such violence, threats, intimidations have taken place in this county and that this board must be a party to an effort to keep Negroes from voting.

First, this board has never heard of any act of violence, threat or other act of intimidation toward any Negro in this county being used as a means of deterring any Negro from registering or voting. In fact, there has been no race trouble at all in this county in the memory of any member of this board.

This board strongly resents the inference that Negroes are systematically denied the right to register or vote in this county. For the past 3 years the undersigned have composed the board of registrars for this county, and during that time not a single Negro has been denied the right to vote because of his race. Negroes and whites are treated on the same basis by this board, and we defy anyone to produce anyone who has been denied the right to vote on account of his race.

If this board has been at fault in any respect in registering Negroes, it has been in not requiring them to comply strictly with the qualification tests set up by the registration laws of this State. An investigation of the facts here by any impartial person would be welcomed.

D. L. STONE, *Sr.*,
Waynesboro, Ga., Chairman.
J. FRED CLAXTON,
Girard, Ga.
J. C. DANIEL,
Waynesboro, Ga.

Sworn to and subscribed before me, this 4th day of March, 1957.

R. U. HARDEN,
Notary Public, Georgia State at Large.

Senator ERVIN. I ask that the column entitled "Gus Courts Testifies" which appears in the Delta Leader of Delta, Miss., be printed in the record of the hearings on the civil rights bill. This column was written by Harrison Henry Humes, publisher of the Delta Leader, an able and outstanding Negro citizen of Greenville, Miss., who enjoys the confidence and respect of the people in his area of the country.

(The article referred to follows:)

[The Delta Leader, March 8, 1957, Greenville, Miss.]

HARRISON HENRY HUMES SAYS: GUS COURTS TESTIFIES

Mr. Gus Courts, 65-year-old one-time citizen of Belzoni, Miss., Humphery County, testified last Thursday for civil rights legislation before the Senate Judiciary Committee and it was reported as saying, "My wife and I and thousands of us Mississippians have had to run away, we had to flee in the night. We are American refugees from the terror in the South all because we wanted to vote."

We know Mr. and Mrs. Courts left Belzoni, but to say thousands of Mississippi Negroes have had to run away by night because they wanted to vote is erroneous and exaggerated. It is true that many white and black youth have left Mississippi but it has been because of the changing South and the revolutionizing and mechanizing of the farms. They went to other sections looking for job opportunity.

Mr. Courts further charged the intimidation of Negroes on registration rolls in Mississippi by those who operate the election machinery and their associates. Here in Greenville, Miss., Negroes vote freely without intimidation and candidates for public office speak before Negro groups, make house-to-house campaigns and run political advertisements in our paper asking the Negro for his vote.

It is further true that there are qualifications prerequisite for voting in Mississippi and both the white man and the Negro has to qualify. There are Negroes who qualify and there are those who do not qualify because he's afraid that he cannot meet the qualifications and make erroneous charges against the chancery clerks before even trying to qualify or secure the help from someone who possibly could teach him how to intelligently meet the qualifications.

He further states that lots of Negroes have been killed and their bodies found in rivers or lakes because they wanted to vote. This too is farfetched and unfounded. He says he did not know who killed the two persons he saw in the river and he did not know who shot him. We can testify that Mr. Courts was shot at Belzoni, Miss., and while being attended in the hospital, it was alleged by those who visited him that Mr. Courts seemed to have been happy saying, "I will get rich for what has been done to me."

If any group wanted to bring people before the Senate Judiciary subcommittee to testify on civil rights, they should find those persons who will tell the truth. Atrocious stories do not help the Negro question. We have the 13th, 14th, and 15th amendments of the Constitution of the United States which deals with the Negro question and civil rights. This whole question should be intelligently interpreted in the language of these amendments and the citizenry of the United States should be intelligent and religious enough to obey these amendments. The whole question of civil rights would not be if it was not for so many false interpretations, bitterness and strife stirred up over the civil right question.

Jesus says, "If you know my commandments, then keep and do them."

Senator ERVIN. I ask that the following telegram be inserted in the record of the hearings on the civil rights bills.

(The telegram referred to follows:)

JACKSON, MISS., *March 2, 1957.*

Senator SAM ERVIN,
Democrat, North Carolina,
Senate Building:

Correction reference yesterday's telegram Beatrice Young's plea entered and fine paid by her lawyer instead of her husband, November 27, 1956.

JAMES L. BARLOW,
Justice of the Peace, First District, Hinds County, Mississippi.

Senator ERVIN. Acting at the request of Senator James O. Eastland, I ask that the following material regarding the cause of the death of James Edward Evanston, of Mississippi, be inserted in the record of these hearings.

(The material referred to follows:)

TAYLOR & TOWNSEND,
Drew, Miss., March 1, 1957.

In re James Edward Evanston.

Senator JAMES O. EASTLAND,
Senate Office Building, Washington, D. C.

Dear SENATOR: As prosecuting attorney of Sunflower County, Miss., in 1955, I conducted an investigation with the sheriff of Sunflower County as to the cause of the death of James Edward Evanston, a Negro man, formerly of Tutwiler, Miss., who was, prior to his death, a schoolteacher either at Shelby or Merigold, Miss. On the morning of December 24, 1955, Mr. Ed Grittman, a plantation owner, who lives approximately 2½ miles northwest of Drew, Miss., came to my office and handed me a note which he had found in an abandoned car at the Long Lake Bridge west of his home, a copy of which you will find enclosed herewith.

Mr. Grittman stated to me that the automobile was parked near the bridge 4 or 5 days before he made an investigation into the matter, that the automobile was locked and had not been disturbed. He also stated that he thought he could see what looked like a body in the lake. A coroner's jury was summoned by Hon. M. B. Guess, justice of the peace, composed of Ralph Nolen, Howard Grittman, Bert Dees, Bill Cummins, Jim Miles, and P. T. Veazy. Deputy Sheriff J. M. Rice summoned the aid of several Negro men and the body was taken from the lake. A Negro undertaker from Tutwiler, Miss., was called to the scene. In the presence of both white and colored all of the clothing was removed from the body and the coroner's jury could find no evidence of violence, and they determined, in their verdict, that the cause of death was from drowning.

Evanston's wife was notified and she came to my office, together with several others, and identified the original letter as being in the handwriting of her husband.

The body was taken to Clarksdale, Miss., and a doctor came down from Memphis and made an autopsy of the body. Dr. Van R. Burnham, Jr., of Clarksdale, Miss., advised me in regard to the autopsy that there was no evidence of any violence, and as well as I recall, that the cause of death was from drowning. I do not have the doctor's name, at the present time, but will be glad to obtain the same upon request.

Hon. Stanny Sanders, the present district attorney, and the district attorney of Sunflower County in 1955, is here in my office, and neither he nor I know of any other case of drowning of a negro schoolteacher in Sunflower County during the year 1955 or any other time.

At the request of Evanston's wife, this case was thoroughly investigated and I did not feel, at the time, that there was any evidence which warranted an investigation by the grand jury of Sunflower County, or for considering the cause of death as anything other than suicide by drowning.

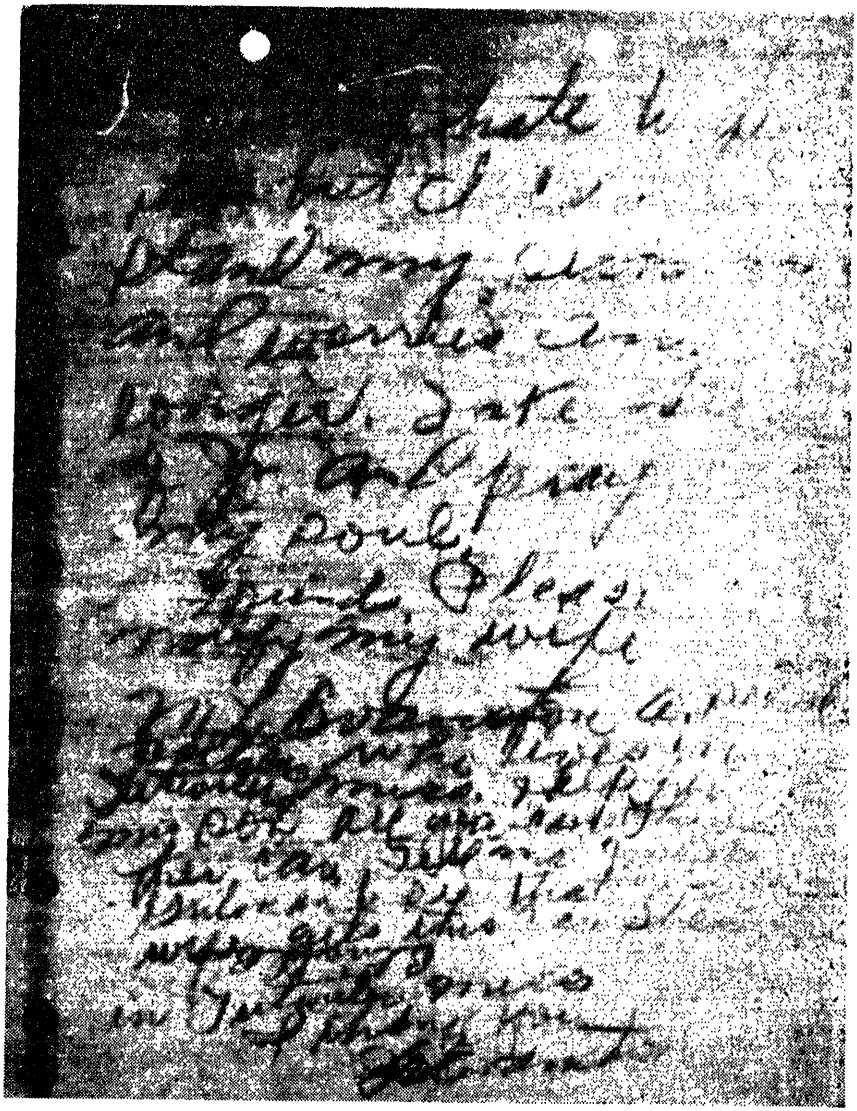
Mr. E. W. Williams, the present sheriff of Sunflower County, at the request of Mrs. Margaret Turner, 765 University, Moulder, Colorado, made a further investigation in regard to the suicide, and I enclose a copy of her letter directed to him and his reply.

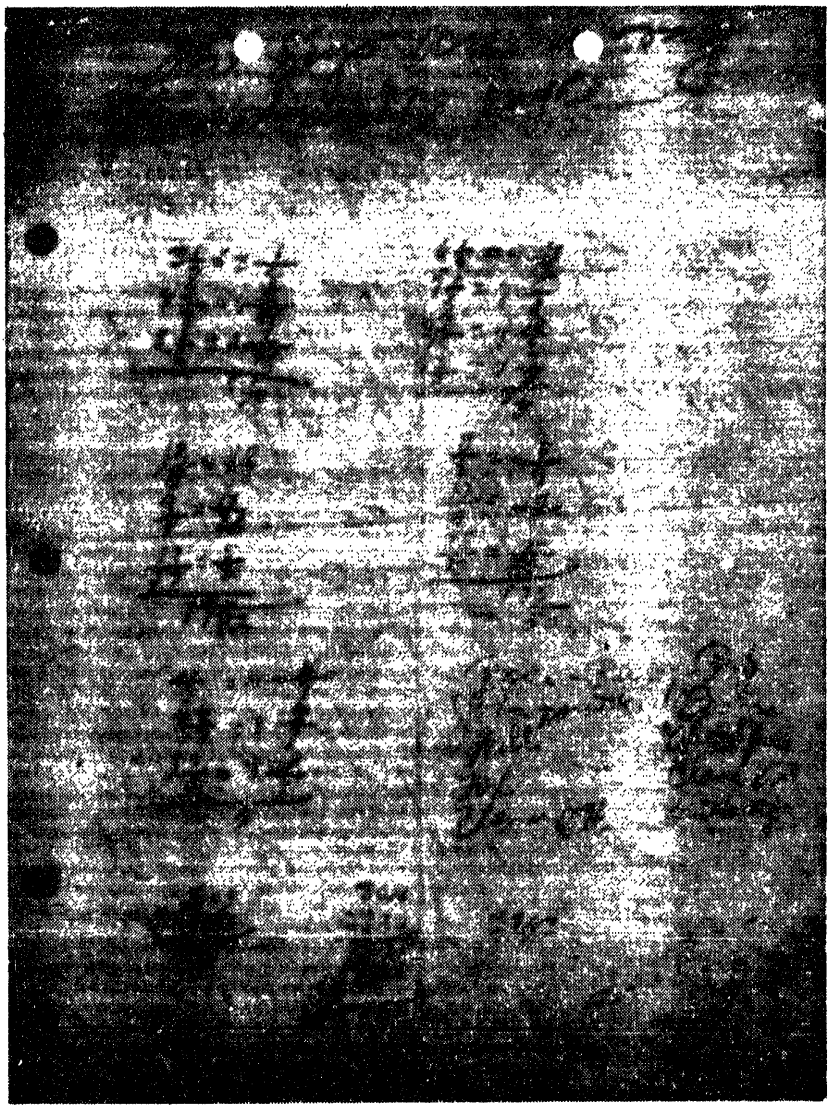
All of the above facts can be substantiated by reputable witnesses, and should you need any additional information, please advise either this office, or Mr. E. W. Williams, sheriff of Sunflower County, of Indianola, Miss., or Hon. Stanny Sanders, district attorney, Indianola, Miss.

With kindest personal regards, I am,

Very truly yours,

P. J. TOWNSEND, Jr.





VERDICT OF JURY

We, the jury summoned to diligently inquire and true presentment make how or in what manner J. E. Evanston, came to his death, and of such other matters relating to the same, find that the said J. E. Evanston came to his death by self-inflicted suicide, having jumped from Long Lake Bridge into the water and drowned.

Witness our signatures on this the 24th day of December 1955.

RALPH NOLAN.
HOWARD GRITTMAN, Jr.
BERT DEES.
BILL CUMMINS.
JIM MILES.
P. T. VEASEY.

Sworn to and subscribed before me this the 24th day of December 1955

M. B. GUESS,
Justice of Peace, Beat No. 5, Sunflower County, Miss.

DECEMBER 24, 1955.

MRS. J. E. EVANSTON,
Tutwiler, Miss.

Dear MRS. EVANSTON: It is with regret that I inform you of your husband's death. His body was discovered this morning by Mr. Howard Grittman and his son, Bo Grittman. I reported the matter to the sheriff of Sunflower County; a coroner's jury was summoned, who returned a verdict of suicide.

Your husband left the following note which is in my office.

"DEAR: I hate to do this but I can't stand my sickness and worries any longer. Take care of Junior and pray for my soul. Friends, please notify my wife M. L. Evanston, a schoolteacher who lives in Tutwiler, Miss. Help her and my son all you can. This is her car. Tell Mr. Howard Grittman to see that my wife gets this car. She lives in Tutwiler, Miss. I thank you.

"J. E. EVANSTON

"The keys are in my pocket in the lake."

Your car is at Mr. Howard Grittman's headquarters about 3 miles northwest of Drew, Miss. The body was delivered to the Tutwiler Funeral Home. Please come by my office and verify that the note was written by your husband. A Negro woman on Smith-Murphy place related that your husband came by her house, Monday, and was acting strange.

Yours truly,

P. J. TOWNSEND, Jr.

BOULDER, COLO., *August 22, 1956.*

SHERIFF OR CHIEF OF POLICE,
Sunflower County, Clarksdale, Miss.

DEAR SIR: As a graduate student at Colorado University and conducting a research project, I would appreciate the following information:

On Christmas Eve 1955, the body of School Principal James Edward Evanston was discovered in Long Lake. His death was, I understand, ruled as suicide although there were some facts which indicated foul play may have occurred. Was there any investigation, et cetera, and, if so, what was the outcome?

Thanking you in advance for your kind cooperation, I am,

Very sincerely yours,

(MRS.) MARGARET TURNER.

SEPTEMBER 14, 1956.

MRS. MARGARET TURNER,
Boulder, Colo.

DEAR MRS. TURNER: Your letter of August 22, addressed to the sheriff or chief of police, Sunflower County, Clarksdale, Miss., was delivered to my office in Indianola.

The car belonging to James Edward Evanston, about whom you write, was found on Long Lake Road, with doors locked. His hat was on the seat of the car. There follows the contents of a note found on the seat of his car, which information I copy from a photostatic copy of the note, the original having been given to Evanston's wife:

"DEAR: I hate to do this but I can't stand my sickness and worries any longer. Take care of Jr. and pray for my soul.

"Friends, please notify my wife, M. L. Evanston, a schoolteacher who lives in Tutwiler, Miss. Help her and my son all you can. This is her car. Tell Mr. Howard Gritman to see that my wife gets this car. She live in Tutwiler, Miss.

"I thank you.

J. E. EVANSTON."

On the reverse side of the paper is written "The keys are in my pocket in the lake."

A coroner's jury ruled the death a suicide. The handwriting in the note was identified as Evanston's writing, and both white and colored people were numbered among his friends. The Mr. Grittman mentioned in the note is a white farmer who lives near Long Lake.

I apologize for not answering your letter sooner, but it was misplaced in my files and has just come to my attention.

Yours very truly,

E. W. WILLIAMS, *Sheriff.*

TALLAHATCHIE COUNTY,
17TH CIRCUIT COURT DISTRICT,
Sumner, Miss., March 2, 1957.

Hon. JAMES O. EASTLAND,
United States Senate,
Washington, D. C.

DEAR SIR: This is to verify the fact that a certain Negro, J. E. Evanston, has never offered or been refused to register for voting in the Second Judicial District of Tallahatchie County. I do not know and never heard of him until recently.

Yours very truly,

CHARLIE COX, *Circuit Clerk and Registrar.*
By MRS. D. R. ROGERS, D. C.

Senator ERVIN. Acting at the request of Senator Thomas C. Hennings, Jr., chairman of the Subcommittee on Constitutional Rights, I ask that the following statement by the Honorable Leverett Saltonstall, United States Senator from Massachusetts, be inserted in the record at this point.

(The statement referred to follows:)

UNITED STATES SENATE,
COMMITTEE ON ARMED SERVICES,
March 5, 1957.

HON. THOMAS C. HENNINGS,
Chairman, Subcommittee on Constitutional Rights,
Senate Committee on the Judiciary,
Senate Office Building, Washington, D. C.

DEAR SENATOR HENNINGS: Before the Subcommittee on Constitutional Rights completes its study of S. 83, I, as cosponsor of the proposal, would like to submit for the consideration of the subcommittee a brief statement in support of the bill. I would very much appreciate its inclusion in the record of the hearings of the subcommittee.

I believe that S. 83 constitutes a major step forward in the creation of an effective civil-rights program. S. 83 is the bill which contains in substance the President's recommendations for the initiation of the program he believes necessary.

No one can deny that the right to vote is a fundamental, inalienable right of all people in a democracy. Every other constitutional right depends upon it. Without this, we have only an illusion of true democracy; history has shown us that when this basic right is abrogated, democracy and freedom fail.

The essence of this bill is to strengthen the mechanism which the Department of Justice should have at its disposal to maintain effectively its authority in an area already assigned to it. It should be remembered that the Federal Government is now empowered to act in this jurisdiction under existing statutes. This bill provides the Attorney General with civil remedies to aid individuals in the

enforcement of constitutional rights. S. 83 will give increased protection to litigants in a court of law. The protection of the individual before the bar of justice has long been one of our proudest bulwarks in our democratic system.

The Civil Rights Commission and the additional Assistant Attorney General, established by this bill, would provide the responsible leadership to which the people of this country can look with confidence for the protection of their constitutional rights.

In such critical times as these when we, as the leader of the free nations of the world, must show to the enslaved world as well as to the free world the strength and character of our form of government, it seems to me to be a matter of great national concern that we guarantee to all our people those rights which have made our country so strong. S. 83 will help to affirm the traditions and heritages of our Republic in the eyes of a world torn with strife and with an uncertain peace.

Sincerely yours,

LEVERETT SALTONSTALL,
United States Senator.

SENATOR ERVIN. Acting at the request of Senator Thomas C. Hennings, Jr., Chairman of the Subcommittee on Constitutional Rights, I ask that the following statement by the Honorable John Stennis, United States Senator from Mississippi, be inserted in the record at this point.

(The statement referred to follows:)

UNITED STATES SENATE,
Washington, D. C., March 8, 1957.

HON. THOMAS C. HENNINGS, Jr.,
Chairman, Constitutional Rights Subcommittee,
Senate Committee on the Judiciary, Washington, D. C.,

DEAR SENATOR: In addition to my statement before your subcommittee on February 15 regarding pending civil rights bills, I have the additional views as expressed in the enclosed statements which I shall appreciate your inserting in the official record of your hearings. These statements deal with specific provisions of S. 83, as well as S. 506 and S. 507.

Thank you for your consideration.

Sincerely yours,

JOHN STENNIS.

S. 83

In the views presented at my earlier appearance before this distinguished subcommittee I sought to alert the members, the Congress and the Nation to the inherent dangers of S. 83 to our whole form of government under law. This bill has the approval and backing of the present administration and was supported by the advocacy of the present Attorney General of the United States, Mr. Brownell.

The clearest and most obviously present danger to the administration of justice throughout the Nation is contained in section 121 in the new paragraph numbered "Fifth," and in section 131 in the subparagraph identified as "(d)," which purport to confer jurisdiction on the district courts of the United States for proceedings instituted under the authority conferred in these sections and existing law without regard to whether the party aggrieved shall have exhausted any administrative or other remedies that may be provided by law. This quoted language is identical in both sections, section 131 relating primarily to voting rights, but section 121 relates to the more general category of constitutional rights.

These would be amendments to that part of the ill-considered civil rights legislation of the Reconstruction days which still remains on our books as the remnant of a dark, bygone era of military control of a defeated and impoverished South when wholesale disenfranchisement of white voters was the policy of government.

Thus the language is baldly laid out in this bill that jurisdiction of the United States district courts shall be exercised without regard to whether the aggrieved party shall have exhausted any administrative or other remedies that may be provided by law, regardless of whether such remedies are sound, reasonable, or adequate to protect the rights of the petitioner.

I am aware, of course, that the general legal principle that administrative remedies must be exhausted prior to resort to the courts is not immutable and inviolate.

I recall several cases in recent years where the court determined as a matter of law that the administrative remedies fitted to the particular facts and circumstances of the case then under consideration were not and could not be adequate. But this was a judicial determination on the individual case, and the decision made as a matter of law. But by the quoted language of this bill conferring jurisdiction on district courts of the United States, the court itself would be bound to accept any pleading, affidavit, or other matter brought before it under this section, assume jurisdiction of the case, and determine the rights of the parties, even thought it might be apparent on the fact of the pleading that the remedies were both adequate and just, that the relief sought was fictitious, and the action of the Attorney General in instituting the proceeding was arbitrary and perhaps politically inspired.

Remedies established by State law would not even be considered by the courts and the specific language of the Constitution relating to the power of the States to qualify their electors under article I, section 2, and under the 17th Amendment would be effectively repealed. Gone are the 9th and 10th Amendments. The Federal judiciary, at the expense of the reserved powers and rights of the State and local government, has discovered new constitutional rights with alarming frequency in recent years. No man alive today could name the rights to be protected by this legislation. 42 U. S. C. 1971 is too vague and indefinite for any limit to be placed on the power sought to be conferred by this bill when the Federal courts of this country are continuously pronouncing new rights under the Constitution and beyond the legislative power of Congress to correct.

The quoted provisions of this bill are repugnant to the whole concept of equity jurisdiction. The distinguished lawyers serving on this committee will recall the history of the equity jurisprudence in the English law, and its deep-rooted traditions and maxims in American law at the time the Constitution was adopted. Important limitations were earlier adopted in the equity courts by the discipline of the chancellor himself. One was that equity would not interfere where there was an adequate remedy at common law. Senators will recall the rigidity of the forms of action and almost fanatical technicality observed by early common law judges which created areas in which relief could not be obtained through the law courts. This, of course, led to appeal to the sovereign, and later, the chancellor in order that justice might be achieved. This was the foundation of equity—to secure justice where the law was inadequate. Here the whole history of equity is disregarded and reversed so that government by injunction will replace government by law.

The distinguished senior Senator from North Carolina has done a magnificent job of alerting the country to the summary proceedings involved in the application and issuance of a temporary restraining order. He has already pointed out that this may be done by affidavit without the person so enjoined—under the penalties of criminal contempt—having an opportunity to cross-examine or even confront the petitioners for such an injunction. They could appear, presenting only an affidavit, probably prepared here in Washington, and possibly bearing a government form number.

Should a local election official or school board member decide to obey the State and local laws creating his office and prescribing his duties, and ignore such injunction or restraining order, he could be imprisoned for an indefinite period without any reliance on this fundamental concept of American justice of his constitutional right to a trial by jury. The evil is that this may be done even though adequate remedies existed for the petitioner. The local officer or other person may be honest and entirely right in his opinion that the existing administrative or other lawful remedies provided would have been sufficient for the orderly administration of the controversy in accordance with due process of law.

In recent weeks an injunction issued by a district court in Tennessee was so broad and sweeping in its terms and application that even the most liberal groups in the country are belatedly becoming aware of the inherent danger of this type of government.

With regard to this type of procedure, an injunction against the world must be void. Except in the most extreme cases, almost beyond the power of imagination, an injunction against criticism of a court decision is a violation of the first amendment.

But the fact that such an order has even been promulgated in a district court of the United States should convince even the most ardent proponent of S. 83 that

no greater lingering damage to our Government as we know it could be effected than by the wholly indefensible extension of this summary power to situations where adequate administrative and legal remedies have long existed. No long-range good can come from empowering the Federal Government to disregard due process of law.

S. 506

Mr. Chairman, I regret to see in title 8 of S. 510 and in S. 506 the re-emergence of the old and discredited FEPC bill for consideration by the Congress of the United States. This discredited approach to the problem of employment of all segments of our population at levels commensurate with their ability is endorsed by those who are often heard to praise free private enterprise in an economically competitive environment.

This system of free enterprise has, of course, been the basis for our country's growth since it was founded. It does not appear that the contradiction between this bill and that system is apparent to its proponents, and such a fundamental inconsistency should be pointed out so that this paradox will be seen in the light of its effect both on American society and on our free enterprise system.

An economic system of free enterprise depends upon efficient operation. Success in this set of conditions depends upon efficient operation, and the economic motives for which all business enterprises are operating depend upon efficiency and selectivity in materials, methods, and in personnel.

While the system we believe in has, in years long past, been criticized as subordinating the individual, much has been done in the way of general regulatory legislation to meet this objection. Minimum wage laws and other labor-legislation have been enacted on the ground that the individual worker is at a disadvantage in the contracting process because of his limited financial resources as compared with those of the other contracting party and established industrial organizations. However, I do not find any legislation which purports to create a contract between a party aspiring to a specific job and an unwilling employer. This would be the effect of the pending bill. Its foundation in economic fact and realities are highly dubious, its legal justification is even more specious. The legal basis cited in the bill employs a scattergun approach of the commerce clause; constitutional rights, and privileges and immunities. These individual legal bases are all inadequate to justify this monstrous butchery of our laws of contract and agency and, taken together, provide no more justification for such an undertaking.

It is true that the overburdened commerce clause has been relied on to justify a great deal of legislation having little or no casual relation to the free flow of commerce between the Staes, and certainly no one would seriously attempt to justify this legislation on the grounds of regulation of commerce.

It is an established legal principle that that which may not be done directly cannot be done indirectly. It would, therefore, appear that this bill, undertaking as it does to establish a commission with the power to create contracts between private individuals relating to employment and other serious and close personal associations, would be empowered to effect a result which Congress itself could not legally accomplish. This principle is as abhorrent to free enterprise as it is to the constitutional law of this country. The objections to such an iniquitous procedure are apparent and obvious: First, there is no meeting of the minds, which is elementary in the contracting process.

The scrap of paper resulting, investing substantial rights in one party alone would not deserve the dignity of being called a contract. The repugnance to involuntary servitude, which is so fundamental in America, is by this bill turned around and by law a new concept of involuntary private employment and association takes its place.

A second objection is that there is no constitutional provision on which this right may be based. Perhaps Congress could create in individuals a right to a Government job, but it has never seen fit to do so. Certain rights inure to people who have Government jobs, but the right to a specific job in the executive branch of the Government involves the interplay of two branches of Government, (1) the legislative branch in creating the job, and the rules and regulations under which the employee's future rights may be determined, and (2) the executive branch through the appointive power defined in the Constitution or in the statutes or by our civil-service laws.

Under this bill, an individual fortunate enough to be identified with an active minority group would in effect have a preemptive right to a specific job by a private employer in the conduct of his business under existing laws and in a com-

petitive environment who might for any reason not desire to have any association with the applicant at all, and particularly in the trusted status of an employee.

Lawyers everywhere will recall the development of the law of agency and the reluctance with which jurists of the English courts adopted the principle of vicarious liability. It is no small thing to be financially responsible for the acts of another. However, the law of agency, built on this principle, developed in order to protect the rights of others adversely affected by the acts of the agent, but only within the narrow limits of the agent's authority or ostensible authority. A parent is still not even liable for the acts of his children except where State statutes have created such a liability. Yet, under this bill, an employee whose job was secured by a cease-and-desist order or injunction might incur financial liability for his employer who had never voluntarily placed the employee in any position of trust, responsibility or even close association.

To rationalize this problem by saying that such losses would in the majority of cases be covered by insurance is to admit only an adolescent understanding of the underlying legal problems attendant thereto.

Because I feel that this problem should be viewed from an economic viewpoint does not mean that I do not also consider that grave special problems will be created by this involuntary association. The right of the individual to choose his associates on the basis of any ground whatever, whether rational or not, has never been seriously challenged until the recent race case decision of the Supreme Court, but even here there is a distinction. So far at least, the Supreme Court has only attempted to legislate in the social field by overruling State laws and constitutions as well as local ordinances, and has not yet trod upon the right of the individual in his own private life or business life to choose such associates. This bill would go beyond the decisions of the Supreme Court, and even this tribunal as presently constituted might encounter difficulty in perceiving constitutionality of such a revolutionary piece of legislation.

The bill is artfully drawn to avoid any semblance of an orderly judicial approach to a problem where the factual issue is of the highest magnitude. It would be impossible for one accused of unlawful practices of this act to get to a trial by jury. It would, in effect, be tried by a governmental commission which must justify its existence on the number of cases processed, and nowhere in Government has there been any evidence that any such commission or board, once created, sought by conciliation or otherwise, to eliminate the cause or justification for its continuance. Manifestly, in this case there would be no incentive to reduce the workload of such an agency.

In conclusion, Mr. Chairman, I should like to say that I think this bill is dangerous and unworthy of endorsement by this or any other administration, that it tampers with the very foundation of our society, as well as the laws of contract and agency, and when considered with other bills now before your subcommittee, indicates the magnitude of the revolutionary change in our whole way of life and government if this country should ever suffer the misfortune of seeing it enacted into law.

S. 507

My primary objection to the Federal anti-poll-tax bill is that it is unconstitutional. In this field, Congress is without power to regulate the qualifications of voters because of the express terms of the Constitution, which provide that:

"ARTICLE I, § 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."

And, as relates to the election of Senators:

"The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, * * *. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures."

This language means exactly what it says. Even the most ardent proponent of this legislation would not contend that Congress has the power to regulate the qualifications of voters for the most numerous branch of the State legislature. Certainly this could not be done where one of the qualifications is payment of an admittedly lawful State tax.

While payment of a poll tax as a requisite for voting has been a requirement in fewer and fewer States in recent years, the action has come about by action of the State legislatures under this specific grant of constitutional power.

But the reverse process, the modification of the requirement for voting for so-called national officers by an act of Congress, is manifestly unconstitutional since presumably the same requirements would apply to the election of State officials even after this bill was passed. Thus the express language of the Constitution would have been flaunted since different qualifications would be applicable.

If this undesirable interference with the State's constitutional power to qualify electors is to be accomplished, it must be done by a constitutional amendment.

But if all this change, sought only for political reasons, were to be brought about, not one single person would thereby be enfranchised. Unlike the other two constitutional amendments, the 13th and 19th amendments, which enfranchised freed slaves and women, this amendment would not confer the right to vote on any class. The only people who could possibly benefit are tax delinquents. Such a group hardly deserve the consideration of a constitutional amendment.

Senator ERVIN. The subcommittee now will take a recess subject to the call of the chairman.

(Whereupon, at 11:50 a. m., the subcommittee was recessed, subject to call of the Chair.)

APPENDIX

FRIDAY, MARCH 15, 1957

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

The subcommittee met, pursuant to recess, at 10:30 a. m., in room 104–B, Senate Office Building, Senator Thomas C. Hennings, Jr. (chairman of the subcommittee) presiding.

Present: Senators Hennings, Watkins, and Hruska.

Also present: Charles H. Slayman, Jr., chief counsel, Constitutional Rights Subcommittee.

Senator HENNINGS. At the close of our hearings on March 5, 1957, it was announced that the record would be kept open until noon, eastern standard time, Friday, March 8, 1957, for the receipt of statements filed for printing in the record of these hearings.

The subcommittee received, prior to that deadline, the following statements and documents for insertion in the record, and without objection they will be so inserted:

1. Statement of Hon. Sam Engelhardt, Jr., State senator, 26th senatorial district of Alabama (submitted by United States Senator Sam J. Ervin).

2. Letter from Senator Olin D. Johnston to Senator Thomas C. Hennings, Jr., in regard to the appearance of the South Carolina delegation.

3. Letter from Hon. T. C. Callison, attorney general, South Carolina (submitted by Senator Olin D. Johnston).

4. Telegram to the Honorable Adam Clayton Powell, Jr., Representative, 16th District, New York, from Daniel L. Beasley, Macon County, Ala.

5. Statement from Daniel L. Beasley, Macon County, Ala., concerning board of registrars (submitted by Congressman Powell).

6. Letter from Governor Folsom to Daniel L. Beasley (submitted by Congressman Powell).

7. Extract from Birmingham Post-Herald, February 8, 1957 (submitted by Congressman Powell).

8. Statement by Walter P. Reuther, president of the United Automobile Workers, Aircraft and Agricultural Implement Workers of America International Union.

9. Statement, United Steel Workers, committee on civil rights, Frances C. Shane, executive secretary.

10. Statement, Textile Workers Union of America, AFL–CIO, John Edelman, Washington representative; Benjamin Wyle, Max Zimny, associate counsel.

11. Statement, Amalgamated Meat Cutters and Butchers Workmen of North America, Earl W. Jimerson, president, and Patrick E. Gorman, secretary-treasurer.

12. Statement, National Council of Churches of Christ in the United States, Ralph M. Arkush, recording secretary.

13. Statement, American Baptist Convention, Kenneth Lee Smith, associate professor, Crozer Theological Seminary.

14. Statement, Women's International League for Peace and Freedom, Mrs. Dorothy Hutchinson, member of national board.

15. Statement, American Civil Liberties Union, Patrick Murphy Malin, executive director (in reply to statement by Merwin K. Hart).

16. Statement, National Association of Social Workers, Rudolph T. Danstedt, director, Washington branch office.

17. Statement, American Council on Human Rights, John T. Blue, director.

18. Statement and exhibits 1 through 23, Montgomery Improvement Association, Fred D. Gray, counsel.

19. Statement, American Jewish Committee, Irving M. Engel, president; Edwin J. Lukas, director, department of national affairs.

20. Statement, Japanese American Citizens League, Mike M. Masaoka, Washington representative.

21. Statement, Tuskegee Civic Association, C. G. Gomillion, president.

22. Statement, Lamar O. Weaver.

23. Statement, Hon. George Huddleston, Jr., Congressman, Ninth District, State of Alabama.

24. Georgia Voters' Registration Act (submitted by United States Senator Herman E. Talmadge, of Georgia).

(The materials referred to follow:)

Mr. Chairman, members of the Senate Subcommittee on Constitutional Rights, I am State Senator Sam Engelhardt, Jr., of the 26th senatorial district of Alabama, also executive secretary of the Association of Citizens Councils of Alabama. I appreciate the opportunity of being allowed to appear before this committee in opposition to these civil-rights bills.

In my opinion, and in the opinion of the vast majority of the people of Alabama and the South, these bills as named are a misnomer. These bills should be known as the civil-strife bills of the 85th Congress.

In one of these bills, stiff penalties are imposed on organizations or individuals, in disguise. Obviously, this section of the bill is referring to the Klan. A vast majority of the people of the South do not adhere to the Klan's principles and objectives, but these bills may create a similar organization not necessarily with the Klan principles.

Prior to the May decision of 1954, relationships for the most part between colored and white in the South were friendly. Since that time, NAACP activity, activity by liberal organizations, and other agitating groups have made the South two separate camps, so to speak. We know that most of the Negroes in the South do not go along with NAACP ideas and agitation movements. Let me cite you a few examples of the feeling of the Negroes toward NAACP and its members. As executive secretary of the Alabama Association of Citizens Councils, our organization was formed to preserve segregation peacefully and legally. To prevent violence, and in carrying out these objectives, we have to keep our lines of communication open between the races. This is what some of my colored friends tell me. Bear in mind that they always beg me not to make their names known for fear of reprisals on the part of NAACP, either bodily harm or reprisals in other ways. They say that the NAACP has goon squads operating in different towns of the South in order to stir up trouble. They are not natives of these towns, but come from other sections of the country and operate for a few days at a time and leave, intimidating their people in every way possible, such as threats, violence, etc.

Take Montgomery, Ala., as an example. Montgomery, Ala., before the advent of Martin Luther King, was probably one of the best cities in the South for Negro opportunity. This has long since gone by the board. The same goon squads as referred to earlier have operated in Montgomery for well over a year. I am told this by not only local Negroes, but one well-known Negro that doesn't live in that area. Of the 50,000 Negroes in Montgomery, I am told that at least 45,000 of these Negroes do not want integration in any form whatever, but merely want economic and educational advantages separately—but in the main to be left alone. These 45,000 Negroes have no leadership and live in fear of reprisals by their own race.

Montgomery, Ala., has been receiving worldwide publicity due to the bus boycott and other forms of agitation. Let me say this, that Montgomery is probably the most lied-about city in the whole United States. There has been no breakdown of law and order there; in fact, the alleged participants in the recent disorder there have been caught and have been indicted by grand juries and are awaiting trial in May. The Police Department of Montgomery has employed additional officers to preserve law and order, and when Montgomery is referred to as a city without law and order, a city of violence, that is absolutely untrue.

In previous testimony before the House Subcommittee on Civil Rights, and also the Senate Subcommittee on Constitutional Rights, reference was made to the voting situation in my home county of Macon. Let me say that the person or persons testifying before these committees were in error when they made the statement that we had no board of registrars. We had a board of registrars operating. This board was composed of Grady Rodgers, of Tuskegee, and Herman Bently, of Notasulga. If this statement is doubted, it can be proved without question.

If the inhabitants of other sections of the country feel that we are mistreating our colored friends, we feel that they should do two things: Come South and actually see for themselves, and then if they find that we are mistreating these same colored friends, we would like to recommend to them that they make arrangements to move all those that are dissatisfied out of the South into other areas of the country. I venture to say that in my own county of Macon, that is 86 percent colored, not over 500 of them would be willing to move.

I will also make this prediction: If a Civil Rights Commission is set up as prescribed by this bill, within 5 years there will be a determined effort made by Congressmen from outside the South to repeal this act.

I hope for the good of the South and the entire United States that these bills will not be enacted.

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
March 2, 1957.

Senator THOMAS C. HENNINGS,
Chairman, Subcommittee on Constitutional Rights,
Senate Judiciary Committee,
United States Senate, Washington 25, D. C.

DEAR TOM: I am enclosing a letter which I have received from Hon. T. C. Callison, attorney general, State of South Carolina, listing the names of the persons who will testify before the Subcommittee on Constitutional Rights.

I wish to add the following names to the list of those who will testify: Hon. Thomas H. Pope, representing the South Carolina Bar Association; Hon. Robert McNair, State house of representatives; Hon. James Spruill, State house of representatives.

I shall bring these gentlemen to the hearings on Monday, and I am looking forward to introducing them.

With warm personal regards and best wishes, I am,

Sincerely yours,

OLIN D. JOHNSTON.

STATE OF SOUTH CAROLINA,
OFFICE OF THE ATTORNEY GENERAL,
Columbia, February 28, 1957.

HON. OLIN D. JOHNSTON,
Senate Building, Washington, D. C.

DEAR SENATOR JOHNSTON: I wish to thank you for your kindness in arranging for South Carolina to be heard before the Special Committee of the Senate Judiciary Committee on the matter of Civil Rights.

I also thank you for your offer to assist the South Carolina delegation while in Washington, especially as to the matter of transportation. I will not personally attend this hearing but Mr. D. R. McLeod, assistant attorney general, will be present and represent this office. I understand that Mr. Joseph O. Rogers, Jr., a member of the house from Clarendon County, and Senator John West of Kershaw County, will be present but will not have anything to say unless something should arise which would prompt them to participate.

In addition to those above named, I assume that Senator Tom Wofford as well as Mr. C. T. Graydon of Columbia will appear for the hearing.

I will appreciate it if you will look after the introductions of these gentlemen, and especially Mr. McLeod from this office.

With kind personal regards, I am,

Sincerely yours,

T. C. CALLISON, *Attorney General.*

TUSKEGEE, ALA., *February 19, 1957.*

Congressman ADAM C. POWELL,
House of Representatives, Washington, D. C.

No board of registrar appointed as of this date for Macon County, Ala.

DANIEL L. BEASLEY,
Tuskegee Institute, Ala.

INFORMATION ABOUT MACON COUNTY, TUSKEGEE, ALA.

Macon County has been without a board of registrars for more than 365 days; in fact, since January 16, 1956. The Governor stated on March 22, 1956, that he was unable to get anyone to serve (meaning white persons), but since that time he has received signed statements from Henry F. Faucett, Charles M. Keever, and Bernard Kohn that they were willing to serve if appointed. All of these men are white. Macon County has a population of over 27,500 Negroes and less than 5,000 white people. There are approximately 3,000 whites on the voters' list and 1,000 Negroes. There are many well-trained citizens here in this county who desire to register and vote, but we have no board of registrars.

DANIEL L. BEASLEY,
A Citizen of Macon County.

STATE OF ALABAMA,
GOVERNOR'S OFFICE,
Montgomery, February 6, 1957.

Mr. D. L. BEASLEY,
Tuskegee Institute, Ala.

DEAR MR. BEASLEY: I have received your letter of February 4, regarding the Macon County Board of Registrars.

I have been working on this diligently for some time now and I hope in the very near future to have a functioning board in operation.

Sincerely,

JAMES E. FOLSOM, *Governor.*

SUBMITTED BY CONGRESSMAN POWELL

[From the Birmingham Post-Herald, February 8, 1957]

(Extract from the Post-Herald account of testimony given by McDonald Gallion, chief assistant to Attorney General John Patterson of Alabama before the House Judiciary Subcommittee.)

* * * Gallion was asked whether vacancies existed on the Macon County Board of Registrars for a year as charged by the NAACP.

He replied that vacancies did exist but only for a short time and registration now is taking place.

STATEMENT PRESENTED BY WALTER P. REUTHER, PRESIDENT OF THE UNITED AUTOMOBILE WORKERS, AIRCRAFT AND AGRICULTURE IMPLEMENT WORKERS OF AMERICA INTERNATIONAL UNION

This statement is in support and supplementation of the statement that was presented to your committee by Roy Wilkins for his organization and 25 other organizations participating in the Leadership Conference on Civil Rights.

Because of our desire to cooperate with Chairman Hennings and other members of the committee in expediting hearings on civil-rights bills for the purpose of getting the earliest possible action on such legislation in both Houses, I am asking that this statement simply be presented and filed as part of the record of your hearings, together with the comprehensive UAW statement describing the vast and tragic need for FEPC and other civil-rights legislation which we presented to a House Committee on July 27, 1955.

The statement we presented then is substantially accurate and valid today. For that reason we request that it be made part of the record of the present hearings. To it we would add the following to bring the record, as we see it, up to date:

Since July 1955 some States, cities and towns, and many unions, including our own, have continued to make progress in establishing civil rights for all Americans, regardless of race, religion, color, national origin or ancestry.

But, as was stated in our 1955 testimony, most progress has been made where the extent and severity of the discrimination have been less; least progress has been made where injustice is greatest.

State and local governments have acted. The courts have acted in historic pioneering advances; the Federal executive branch has acted within limits that, in our opinion, are narrower than need be, namely, through work of the Federal Committee on Contract Compliance and in instituting or supporting court actions, though not in administrative actions that might have been taken to support the courts.

Only Congress has failed to act. The do-nothing record is 2 years longer than it was when we presented our 1955 statement. Discrimination in employment, that had been reduced by President Roosevelt's wartime FEPC, has been evaded by Congress ever since the wartime FEPC was put to death in 1945 by the Russell rider on an appropriation bill. This rider was never voted upon on its merits by either House, but was forced through under the usual threat of filibuster against an entire bill.

However, progress has been made in the sense that the American people have a keener and more widespread understanding of the reason for congressional inaction. They know the roadblock to civil-rights legislation is the filibuster, the denial of majority rule. Because they have a better understanding of how and why majority rule is blocked in the Senate, the prospect for meaningful civil-rights legislation being passed by both the House and Senate and signed by the President seems better than in previous years—provided anti-civil-rights forces in both Houses can be defeated in their efforts to delay action again until late in the session when the filibuster can be used most effectively to kill legislation.

While we continue to support and to underline the need for a permanent Federal FEPC with power of enforcement through the courts, we recognize the hard political fact that, because President Eisenhower and the Republican Party are on record in opposition to an effective Federal FEPC, enactment of such legislation at this time would be extremely difficult. A majority in each House, we believe, will vote for such a bill if given an opportunity to do so. However, the filibuster has to date blocked such a vote in the Senate. If only 33 of the 28 Republican and 27 Democratic Senators who voted January 4, 1957, to readopt the rule requiring 64 votes to break a filibuster either vote to continue a filibuster against an effective FEPC bill or, by being absent, in effect vote to keep the filibuster going, they will thereby veto the will the majority of the Senate and of the House.

On the other hand, because the stripped-down civil-rights bill, H. R. 627, was passed by a bipartisan 2 to 1 majority in the House on July 23, 1956, and again has bipartisan support and has been endorsed by President Eisenhower, it would seem to have the best prospect of passage in both Houses.

If Republicans will wholeheartedly support President Eisenhower on this issue, they can supply the votes in the Judiciary Committee to get this bill reported to the Senate calendar early enough to have a chance of passage. Republicans can, if they will, combine with liberal Democrats to get the 64 votes necessary to break a certain filibuster against that bill or any other civil-rights

bill that carries any practical meaning for the millions of Americans who now suffer tragic and costly discrimination because of race, religion, color, national origin or ancestry.

Because it shows how hard the fight has been and will be, we briefly review the chronology since the 1955 House Judiciary Committee hearing:

Following the July 27, 1955 hearing, the civil-rights bills remained dormant for 8 months both in the House and Senate, partly because of southern opposition and partly because President Eisenhower and his Attorney General did not send to Congress their recommendations for civil-rights legislation.

On April 9, 1956, 8 years, 3 month and 6 days after the convening of the 83d Congress, President Eisenhower and his Attorney General made their recommendations to the Congress. Committee action was stepped up in the House and Senate.

In the ensuing weeks and months, civil-rights supporters in and out of Congress worked hard to get action on the stripped-down civil-rights bill in time for final passage before adjournment. But enemies of civil rights fought skillfully and successfully.

In the House, despite a bipartisan group striving for early action, enemies of civil-rights legislation fought delaying actions at every step within the committee before the Rules Committee and after the bill was brought to the floor 2 weeks before adjournment.

Although the final House vote on H. R. 627 had been set for July 20, opponents managed to delay that vote until the following Monday, July 23, 4 days before the adjournment of Congress.

In the Senate, heroic efforts by a small bipartisan group, led by Senators Douglas, Lehman, and Hennings, to bring H. R. 627 to the Senate floor for vote before adjournment, were blocked by the threat of filibuster. This threat was cited by Majority Leader Johnson and Minority Leader Knowland. They said the threat was not merely against H. R. 627. It was pictured as a threat to filibuster that bill and other items of legislation, including the addition of disability coverage to the old-age and survivors' insurance title of the Social Security Act and the appropriation of funds for the mutual security program. They were supported by a bipartisan vote of 76 to 6 against Douglas' effort to bring H. R. 627 to the Senate floor.

Result: The stripped-down civil-rights bill, which had been passed by a 2 to 1 majority in the House and which certainly would have been passed by an overwhelming majority in the Senate, had it been allowed to come to a vote, died in a Senate Judiciary Committee pigeonhole with the adjournment of the 84th Congress at midnight, July 27.

Civil rights supporters took the issue to both party conventions. The Democratic convention repeated earlier pledges to enact civil-rights legislation and to establish a majority rule in the Congress. The Republican Party repeated more limited pledges on civil-rights legislation, omitting FEPC, and refused to pledge action to establish majority rule at the start of the 85th Congress, holding that determining rules was the exclusive concern of Members of each House.

At the opening of the 85th Congress, a strong bipartisan movement succeeded in increasing the number of Senators committed to the establishment of majority rule in the Senate at the start of the new Congress. The number nearly doubled, rising from the 1953 total of 21 to 41, seven votes less than the majority needed to adopt rules, including a new rule 22 that would break the veto power of the filibuster and substitute majority rule (38 Senators so voting; 3 others who were absent were so committed); a tie 48–48 vote could and would have been broken by Vice President Nixon's ruling, in line with his opinion that section 3 of rule 22 is unconstitutional.

This recapitulation, we submit, is relevant to this hearing. It supports the recommendation that your committee speedily report out a bill identical with the bill reported to the House in 1956, assuming that early in 1957 it will again be reported to and passed by the House. The four essential features of such a bill were specifically enumerated and endorsed by President Eisenhower in his 1957 state of the Union message:

(1) Creation of a bipartisan commission to investigate asserted violations of civil rights and to make recommendations;

(2) Creation of a Civil Rights Division in the Department of Justice in charge of an Assistant Attorney General;

(3) Enactment by the Congress of new laws to aid in the enforcement of voting rights; and

(4) Amendment of the laws so as to permit the Federal Government to seek from the civil courts preventive relief in civil rights cases.

If civil rights supporters in the House are successful in getting an early rule for floor consideration of such a bill, the House will pass the bill and get it to the Senate at an early date, and if your subcommittee will favorably report the same bill you and other Members of the 85th Congress who support this legislation will have done a great work in the cause of civil rights. You will have put the responsibility upon the Senate early enough in the session to provide the best possible set of circumstances for early and successful efforts to run the obstacle course erected by bitter enemies of civil rights in the Senate, both in committee and on the floor.

Only final action by both Houses, transmission to the President, and his signature on a real civil rights bill along the lines of H. R. 627 will have genuine meaning in the daily lives of the many millions of Negroes and members of other minority groups who continue to suffer daily the discriminations based on race, religion, color, national origin, or ancestry.

Ten long years ago, President Truman's Committee on Civil Rights published its findings in a report entitled "To Secure These Rights." That report concluded with a challenge: "The time for action is now."

This challenge is still unmet by Congress.

We believe the American people expect the 85th Congress to meet that challenge now, early in 1957, with civil rights legislation at least as meaningful as the stripped-down bill passed by the House and killed by Senate filibuster last year and now supported by bipartisan forces within and outside the Congress.

The cost of another failure would be incalculably worse, economically and politically, both within our country and in its effect upon our standing among the nations of the world. The reward for success will be vast, inside and outside our country.

The time for action is now.

STATEMENT BY FRANCIS C. SHANE, EXECUTIVE SECRETARY, COMMITTEE ON CIVIL RIGHTS, UNITED STEELWORKERS OF AMERICA

The speedy consideration which the 85th Congress has given to civil rights legislation has made possible the early enactment of legislation in this area for the first time in over 80 years.

Bipartisan action by the members of both House and Senate Judiciary Committees has made the current hearings possible and it is conclusive proof that the members of the legislative branch of the Federal Government are fully aware of the intense public feeling which has developed in support of the enactment of legislative guaranties which will protect the civil rights of all the people who live within the boundaries of our country.

The United Steelworkers of America takes this opportunity to add its testimony to that of other groups and individuals who are genuinely concerned with the protection of our constitutional rights and the strengthening of the democratic processes which have carried us to our position of leadership among the free nations of the world.

We believe that it is the immediate business of the 85th Congress to enact civil rights legislation which will make meaningful not only the decisions of the United States Supreme Court outlawing segregation but all of the basic rights which are guaranteed under the Constitution of the United States and the Bill of Rights.

There is no justification for further delay. Both great political parties pledged themselves in the 1956 campaign to work for the elimination and discrimination of all kinds and to provide for the fair and equal treatment of all regardless of their race, color, religion, or nationality.

The President of the United States has reaffirmed his campaign pledges by urging Congress to enact a four-part civil rights program, which at best represents only a minimum of what is actually needed.

While we fully endorse each part of the President's program, our endorsement is not to be construed as accepting this "minimum program" as a substitute for the comprehensive civil rights program which we believe must be enacted if all our preachments about democracy and freedom are to become meaningful to all Americans.

But, the passage of this program, inadequate though it is, will clear the way for the consideration of other measures which will extend our basic civil rights.

We therefore respectfully urge your committee to immediately take affirmative action to report this program to the full Senate with the recommendation for adoption.

In so doing, the Congress will have taken a long delayed step forward toward strengthening the priceless heritage of freedom and equality which all Americans have fought to preserve since the birth of our country.

"All Rights Denied"

Citations of some of the killings, beatings, kidnapings, and other outrages and attacks suffered by representatives and members of the Textile Workers Union of America, AFL–CIO, in recent months and years; plus typical and frequent violations of civil liberties such as refusal of places to meet and denials of free speech, which are almost a commonplace fact of life in the daily operations of a legitimate labor union seeking to assist workers to form unions of their own choosing.

Testimony on civil-rights legislation presented to the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary by Benjamin Wyle, general counsel; Max Zimny, assistant general counsel; and John W. Edelman, Washington representative for Textile Workers Union of America, AFL–CIO

INTRODUCTORY

The Textile Workers Union of America, AFL–CIO, explicitly and earnestly associates itself with the earlier statement in support of long overdue civil-rights legislation made to this committee on behalf of the American Federation of Labor and Congress of Industrial Organizations by Andrew J. Biemiller.

Our purpose in offering the following carefully considered supplementary testimony is not to reiterate what has already been adequately argued. This presentation deals with one phase of the civil-rights testimony which has not been dealt with by other witnesses and which is vitally important to the trade-union movement of this country, as well as to the general public. The particular problem with which the testimony of the Textile Workers Union of America is concerned concerns the consistent and flagrant denial of elementary civil rights to trade-union members, and especially to union organizers and officers in many sections of this country and particularly in the South.

Almost completely ignored by the press and public is the fact that as of the year 1957, perfectly orderly and peaceful union spokesmen are regularly beaten up or subjected to other forms of violence, forcibly ejected or made the victims of planned and instigated mob terror or violence in many, if not most, textile communities in the United States. In addition, union members are frequently denied places in which to meet, to rent offices, and are effectively refused the right of free speech by dozens of different tactics of intimidation, economic discrimination, or plain brute force.

These violations of constitutional rights took place for years before the United States Supreme Court decision on the integration of schools and have continued unabated in recent months and weeks. We make this point to remove any suspicion that the instances we describe have any direct connection with controversies regarding race relations; nor can the inhibitions on legitimate trade-union operations be brushed aside on the ground that this is a passing phase related to current incidents concerned with struggles over enforced segregation of Negroes.

To forestall the frequently advanced excuse that these outrages against labor organizations are of no concern to legislative bodies, we must stress the fact that in practically every instance which we shall cite in this brief, either positive action or deliberate and purposeful inaction on the part of local public or police officials is involved. Moreover, on the basis of long experience, the Textile Workers Union of America can confidently assert that wherever and whenever the Federal Bureau of Investigation or other enforcement agencies of similar stature have concerned themselves, even in the most discreet or a positively apologetic manner, in one of these situations the deterrent effect is immediate and palpable.

Nor is this testimony merely a complaint or a recitation of wrongdoing. We offer specific and carefully thought out proposals for amendments to the present

statutes which we believe would have the effect of substantially limiting or lessening the illegal and immoral suppressions to those seeking merely to effectuate their right to form unions of their own choosing.

NECESSARY BACKGROUND INFORMATION

The Textile Workers Union of America, AFL-CIO, is a labor organization representing about 285,000 employees in all branches of the textile industry. About 1 million workers are employed in this industry. Roughly one-third of the industry is organized.

The major subdivision of the textile industry is cotton spinning and weaving. More than 80 percent of this subdivision is located in the South. Roughly 15 percent of southern cotton textiles are members of this or other unions. The organization of the southern textile worker has been and continues to be the primary organizational target of the Textile Workers Union of America.

In 1950, a Subcommittee on Labor Management Relations of the Senate Committee on Labor and Public Welfare of the 81st Congress, pursuant to Senate Resolution No. 140, conducted an investigation of labor-management relations in the southern textile industry. It issued its report in 1951. A majority of the committee concluded that there existed in the textile industry, primarily in the South, a widespread conspiracy to prevent union organization and to destroy those unions which now exist. The report of the majority found that:

"The extent and effectiveness of the opposition in the southern textile industry is almost unbelievable.

"In stopping a union organizing campaign, the employer will use some or all of the following methods: surveillance of organizers and union adherents; propaganda through rumors, letters, news stories, advertisements, speeches to the employees; denial of free speech and assembly to the union; organizing of the whole community for antiunion activity; labor espionage; discharges of union sympathizers; violence and gunplay; injunctions; the closing or moving of the mill; endless litigation before the NLRB and the courts, etc. After all these fail, the employer will try to stall in slow succession, first the election, then the certification of the union, and finally the negotiations of a contract. Few organizing campaigns survive this type of onslaught."

The evidence presented to the 1950 Senate subcommittee is in no way outdated. In the 6 years since that investigation was made, a series of similar outrages have occurred—many of which have been called to the attention of the United States Department of Justice or other Government agencies. The fact that we continue to be subject to violence and are denied free speech and assembly in our organizing efforts, without effective recourse to a Federal, State, or local agency, we believe requires and warrants the attention of this committee.

The cases, or situations, which we enumerate in summary form herewith are all typical and could be duplicated if the time and the patience of the committee permitted. What we describe are not isolated outrages; these are the day-to-day experiences of the men and women who represent the Textile Workers Union of America and of the thousands of simple mill workers whose economic and social problems cause them to constantly strive to build a union which can ultimately afford some protection against injustice and deprivation.

I. USE OF VIOLENCE TO SUPPRESS CIVIL LIBERTIES

In March and April of 1956, organizers and officers of this union were brutally assaulted and beaten by a group of thugs led by two ex-convicts outside the Limestone Mills of M. Lowenstein & Sons, Inc., in Gaffney, S. C., when they attempted to distribute union literature. The assaults were inspired and supported by company officials who used company-owned equipment in executing the assaults. A recent intermediate report of a National Labor Relations Board trial examiner found the company responsible for certain of these assaults. (*Limestone Mfg. Co.*, case No. 11-CA-1000, IR-983.) This case is still pending, no final disposition yet having been made.

We use the phrase "certain of these assaults" because the National Labor Relations Board on technical grounds refused to entertain an unfair labor practice charge in respect to what were the most brutal of two sets of attacks on union spokesmen. In the case which was the subject of an official National Labor Relations Board investigation, a top company official was present when union members were knocked down by having the fire hose turned on them and directed this whole attack. Further, the rowdies who participated in this violence were handed baseball bats out of the plant official's automobile.

In a previous case in which union men were slugged by company hired thugs no top plant official was physically present: hence the fact that the National Labor Relations Board rejected an unfair labor practice charge.

The local sheriff not only refused to arrest the assailants in this situation but cooperated with them by informing them when the union organizers would arrive. Textile Workers Union of America had informed the sheriff when the leaflet distribution would take place. After the attack the sheriff refused to act against the assailants upon the complaint of the unionists and, instead, threatened to arrest the victims for inciting a riot unless they left town.

Both this union and AFL–CIO President George Meany complained to the Department of Justice about the behavior of the sheriff as well as about the actual assaults. The Justice Department declined to intervene in any way on the grounds that the assailants were not public officials and that the law does not apply to the actions of private persons and that the sheriff was guilty not of action but inaction and is, therefore, technically in the clear as the law now stands.

Avondale Mills, Sylacauga, Ala.

In the summer of 1955, three of our organizers who were conducting an organizing campaign at Avondale Mills in Sylacauga, Ala., were attacked by a mob of 20 employees just as they were preparing to distribute leaflets outside the plant gates. The attack was incited, if not squarely directed, by Donald Comer, chairman of the board of directors of Avondale Mills. At a captive audience meeting of the workers, Mr. Comer characterized the organizers as "black cats" and told the story of how he had once crawled from a sickbed to strangle a black cat he had seen stalking a mockingbird. "There are a lot of black cats outside the mill and something should be done to get rid of them," Comer shouted.

TWUA organizers who were the victims of these beatings have testified to the fact that Mr. Craig Smith, the top executive officer of this corporation and chairman of the American Association of Cotton Manufacturers, stood in the mill yard giving orders to the men who a few minutes later were beaten up and "stomped" as they were attempting to give out handbills on a public thoroughfare.

We complained to the Department of Justice and asked that it intervene and investigate. The Department of Justice declined.

Chief of police directs campaign against union

Perhaps the most sensational case in which a textile union organizer was maltreated occurred during our attempt to organize the Russell Manufacturing Co. in Alexander City, Ala. In that instance the local police force openly and brazenly acted as the agent of the employer.

In January 1945, one of our organizers came to Alexander City to visit his father who was a long-time resident of the city and favorably regarded in the community. The organizer himself had been born and raised in that part of the State. Although he came to town to see his family, the union representative was quickly made aware that there was a great deal of discontent among the cotton millworkers there. After consulting his superior in Birmingham, the organizer came back to Alexander City, registered openly at the hotel, and invited some of his friends who were working in the Russell Mills to discuss the formation of a union.

Before he could actually get started on this unionizing campaign, the TWUA representative was called to city hall by the chief of police, G. Mack Horton, and told to get out of town or he would be mobbed. The chief further intimated that he would use his influence to have the organizer drafted into the Army. This organizer was, at the time, beyond the age limit for military service and was in fact on leave from the Merchant Marine after serving in combat areas. Our representative told the chief he would stay and continue his lawful efforts to organize the workers.

Chief of Police Horton and two assistants, Alfonso Alford and Floyd Mann, thereupon undertook a deliberate campaign to drive our organizer out of town.

For months Alford and Mann followed the representative literally night and day. When the union man would drive out to the mill village, a police car would follow. Alford sat in the hotel restaurant whenever the organizer ate a meal; it was not possible to talk to anyone in town without being observed by either Alford or Mann. Despite this open intimidation, some employees of the Russell Manufacturing Co. signed union application forms and urged others to do so. Apparently this made some drastic measure such as an assault necessary.

The beating of the union organizer took place right in the center of town. It was carefully staged. At the National Labor Relations Board hearing in the case (10-C-1803), one of the Russell employees testified supervisors in the mill boasted that the beating had been planned in the company office and would take place later that day. The beatings were administered by two workers who were given time off from their jobs in the plant. Without preliminaries or provocation, these two workers set upon the organizer, slugged him with their fists until his face was bleeding profusely, then knocked his head against the pavement and kicked him in the ribs as he lay on the ground. A uniformed policeman stood within 10 feet of where the assault occurred and abused the organizer as the workers beat him. While the TWUA organizer lay bleeding in the gutter, Alford shouted to the crowd which stood around watching the beating, that he would "make cash bond for anyone who beat up a union organizer."

The TWUA man staggered to his feet as Chief of Police Horton came upon the scene. Horton took the organizer and the assailants to city hall. He ordered the two workers back to the mill. In the presence of Horton, the workers threatened they would beat the organizer again if he did not leave town. Although not charged with any offense, the organizer was arrested and jailed. He was subsequently released on bail. The organizer secured an attorney who attempted to have warrants issued against the assailants. The attorney was informed that one of the assailants had already been tried and fined $25. The other had been "turned loose."

Kidnaping at Tallapoosa, Ga.

The crude resort to violence in this mill town was fully developed at the hearing before the Senate subcommittee on August 21, 1950, when union witnesses reenacted the kidnaping of a woman organizer by armed antiunion employees at midnight and the assaults upon union members who were distributing leaflets at the gates of the American Thread Co. in Tallapoosa, Ga.

The kidnaping victim was a cotton-mill worker, on strike at the time at another plant in the same State, who went to Tallapoosa as a volunteer organizer, Mrs. Edna Martin, a widow with 6 children, 1 of whom at the time of her abduction was in combat with the United States Army in Germany. In addition to the physical injuries which Mrs. Martin suffered, the mob which rode her out of town stole a prized watch which had been given her by this son with money saved out of a private's pay.

Edna Martin, clad only in nightgown was dragged out of bed at around midnight by a group of local people armed with shotguns who broke into the house in which she had rented a room prior to making visits upon employees of the American Thread Co. With her hands tied, gagged and blindfolded, Mrs. Martin was driven some miles out of town and dumped badly bruised on a dirt road miles from any habitation in near-freezing temperature.

The Civil Rights Section of the United States Department of Justice did make an investigation of this affair and of other related outrages in Tallapoosa. Despite the fact that a police officer with his own eyes saw the beating of a union man and his wife in front of the mill, no action was ever taken by these officials against the town officials or against the ruffians who carried out these attacks.

Some years after this particular affair in Tallapoosa occurred, the men who did the actual slugging of the union members in a public thoroughfare were fired by the American Thread Co. These individuals then had a change of heart and related the whole story to local lawyers representing the Textile Workers Union of America. All of this lurid and completely incriminating data was brought to the attention of the National Labor Relations Board and the Department of Justice with absolutely no result.

The murder of Lowell Simmons

During a strike in Bemis, Tenn., a TWUA official, on Christmas Eve, 1951, called at the home of one of the employees, accompanied by three strikers. The union committee stood on the porch outside the screened door while the employee remained inside the house on the other side of the door. According to the three strikers, Lowell Simmons, the union officials, asked the employee if he was circulating a back-to-work petition and, if so, he would like to see it so that he could call on the signers and seek to induce them to continue to stay out on strike. Whereupon the employee shouted "I've told you before that if you ever cross my path again, I would kill you" pulled out a pistol and killed Simmons with a shot through the screened door.

Tried for murder, the employee, Cecil Cook, testified that our organizer was drunk and angry when he shot him Christmas Eve. The three committeemen who had accompanied Simmons all testified that the conversation referred to above was the total conversation between Simmons and Cook and was carried on in normal tones. In little more than half an hour, the jury brought in a not guilty verdict. Apparently, shooting and killing unionists in that part of the country is not considered objectionable.

Surveillance of union activities

The close and persistent surveillance of union activities by police and company supervisors has proven an effective way of intimidating and coercing workers in their free choice of a union. This practice is very widespread in southern textile communities. See, for example, *Stonco Spinning Co.* (70 N. L. R. B. 614), *Russell Manufacturing Co.* (82 N. L. R. B. 1081), *Bibb Manufacturing Co.* (82 N. L. R. B. 338), *Pacific Mills* (91 N. L. R. B. 60).

The Bibb case is interesting because it illustrates the use of surveillance in a typical southern textile community in which the political government is almost indistinguishable from the company. The National Labor Relations Board described the company town as follows:

"The town of Porterdale was incorporated under the laws of Georgia a number of years ago. However, despite the act of incorporation, Porterdale remains in effect a 'company town.' All its property excepting a railroad right-of-way and churches which the respondent donated to the various religious congregations, is owned by the respondent. All of Porterdale's utilities and public services, excepting police protection and education, are controlled directly by the respondent. The municipal officers of Porterdale, including the mayor, are like most other Porterdale inhabitants, employees of the respondent. By virtue of this dominant landlord-employer position, the respondent effectively controls the civil life of Porterdale. In this situation the relationship between the respondent and the police department, as set forth below, establishes a significant pattern of conduct." [Footnotes omitted.]

Every city official of Porterdale was an employee of the company. The mayor was in charge of the police and was the "house agent" of the company. The city recorder was the company's paymaster and treasurer. The attorneys for the city were the attorneys for the company. With such control over the entire community, the company was able to prevent union organization by around-the-clock surveillance of union organizers and each employee who displayed an interest in the organization. The method was described by the trial examiner in the intermediate report.

"From July 10 to August 10, 1946, or a few days thereafter, policemen of the town of Porterdale were assigned to and maintained a 24-hour-a-day surveillance over the activities of each and every organizer for the union while he was inside the city limits of Porterdale as well as surveillance over the home of employee, Walter Reynolds, which the organizers made their local headquarters in Porterdale and in which much of the union activity took place. By this 24-hour watch over the Reynolds' home, the police were able to know when the organizers were in town and to follow or trail them throughout the town while they were calling upon employees of the respondent. As soon as the organizers would leave Reynolds' home, 1 or 2 policemen would "trail" them until they left Porterdale for the day. If the organizers left the house on foot, left by vehicle, the police followed by police car. If two organizers started out together and then went separate ways, there would be a policeman following each of them. Everywhere the organizers went, the police were sure to follow. For at least the above period of time, there was a policeman within 60 to 75 feet of any organizer who was in Porterdale. The police, except for one new employee who was unable to secure a uniform due to the clothing shortage, were always in uniform. They utilized the regular police car or the chief's automobile, both well-known as police cars to the approximately 3,200 inhabitants of Porterdale. The police made no effort to conceal their activities, but, in fact, made their surveillance as open and public as possible. The police remained at times on public thoroughfares. They said nothing. As described by one witness, the police were always 'sitting and staring.' A number of the employees were afraid to talk to the organizers upon discovering their police escorts. One employee left the union organizer to whom he was talking for the purpose of telling the police escort that he [the employee] had not joined the union. The organizer offered to confirm this statement to the policeman if he should doubt the employee's word."

Surveillance in a company-owned mill village

In the very full brief filed by the Textile Workers Union of America before the Labor Committees of the House and Senate in 1953 interesting quotations appear from an NLRB report and decision dated 1950 describing a situation almost as outrageous as the Bibb case referred to above. This Rhodiss, N. C. (Pacific Mills), situation was more recent than the Bibb (Ga.) case, but is essentially similar. In Rhodiss where the company owned the employees' homes, the foremen and a deputy police officer watched who went in and out of any workers' houses so as to halt meetings at which organizational matters might be discussed. Also in this Rhodiss, N. C., situation an eviction of an active pro-union worker took place. The National Labor Relations Board ordered the man restored to his home; the company (incidentally a concern operating out of Boston, Mass.) refused to comply. The case went to the courts, but was removed from the docket because of a technicality. These two cases, Bibb and Pacific Mills (Rhodiss, N. C.) are examples of the type of present day feudalism that still persists in wide areas of the textile industry in the South and elsewhere.

A classic case of espionage

Both in the brief filed by Textile Workers Union of America in 1953 and an earlier and even more elaborate presentation filed in 1948 there appears considerable data on the case of Frank Ix & Sons, Inc., of nearby Charlottesville, Va.

We respectfully urge and plead with Members of Congress to read that story which details a type of crude espionage which is so amazing as to be almost ludicrous. We have the sworn testimony of the organizer in that case that on certain evenings when he would attempt to visit the homes of employees, he would be followed by as many as 10 foremen in 10 separate cars. In this case employees were thrown out of work because quite inadvertently the organizer had parked his car in front of their homes while making visits around the community. Actually the union representative had not been aware of the fact that an Ix employee lived in the house in front of which he had left his car. But the company stooges put 2 and 2 together and had the unfortunate householder dismissed from his job.

County judge directs violence

At Prattville, Ala., during a strike at the Gurney Manufacturing Co. in May 1947 a county judge, the county sheriff, and the Prattville chief of police with various deputies raided a peaceful picket line, beat the strikers, both men an women, both young and old, with clubs and blackjacks and then hailed these victims into the court, presided over by the judge who directed the arrests. Heavy fines and jail sentences were imposed on more than a score of strikers. Those present in court at the time swore that they were refused the right of counsel or to even make statements in their own defense. Two men were fined because they attempted to shield, in one case a wife, and in another an elderly father, from police beating.

The union organizer (as it happened, a disabled discharged war veteran with many citations for heroism in action) had been previously ordered to leave town by the chief of police.

The local union president, a mill employee whose home was in Prattville, was also ordered to move away.

At least one of the women strikers who were kicked and slugged by the police when they broke up the picket line was lamed, probably permanently, as a result of her injuries.

A couple of weeks after this amazing affair occurred—which, by the way, did not scare the workers into quitting their strike—a truckload of armed strikebreakers was imported from Mississippi in violation of the Byrnes law which forbids just such practices. The strikers and union attorneys brought this situation to the attention of the local authorities but the complaint was ignored. Indeed, the importees armed with knives and guns were turned loose in the streets of Prattville and told to try to instigate fights with the local strikers. These outrageous violations were carefully documented at the time and presented to the Department of Justice which did listen to the story, but no action was ever taken to curb this lawnessness.

This strike occurred during the first administration of Gov. James E. Folsom. Through the intervention of the Governor, a small squad of State highway patrolmen came into Prattville to make it possible for the Textile Workers

Union of America to conduct a couple of union meetings in a peaceable and orderly manner. The Governor, however, did not succeed in curing or correcting the other violence that occurred.

The case of Clarksville, Va.

TWUA has a considerable back file on a Clarksville, Va., matter plus a current file showing continued, if somewhat different types of law violation.

This situation is just a little different because the mayor himself (plus the town banker and other businessmen whose names were given to the Department of Justice at the time) took the leading role in preventing union meetings from being held plus "escorting" union representatives out of town.

This particular matter was first brought to the attention of the civil-rights section by the late Ernest B. Pugh, formerly CIO State director for Virginia. We quote from a letter of Mr. Pugh dated March 30, 1948:

"Mr. ABBOTT ROSEN,
"*Civil Rights Section,*
"*United States Department of Justice,*
"*Washington, D. C.*

"DEAR SIR: I have just wired you a day letter. Same is hereby confirmed: 'We ask you to investigate actions on March 20 of F. A. Burton, Mayor of Clarksville, Va., in denying right of assembly to group of workers of Colonial Mills by coercing proprietor Long of Russell Service Station outside city limits to withdraw use of his property for the meeting. Also the action of Clarksville Police Officer Newcomb who aided and abeted in harassing the workers attempting to peacefully assemble by following them 9 miles from the service station to point over the line into the next county and there accosting them. The mayor and police are aiding and cooperating with Colonial Mills against the workers in its employ by denying the rights of workers to free and peaceful assembly. Letter follows.'

"I enclose therewith 2 full-page letters from the company to its workers and from 11 concerns and individuals, including Mayor Burton, to the employees of Colonial Mills, Clarksville Finishing Division, both of which appeared in the Clarksville Times of March 19, 1948.

"We would not deny the right of free press and free speech as exemplified in these 2-page advertisements. But we also submit that our right to free speech and free assembly should not be nullified and suppressed by attempted coercion and intimidation on the part of the law-enforcement authorities in Clarksville, Va."

The metropolitan press in Virginia, to its credit, gave the story considerable prominence but this fact in no way caused the Clarksville officials to mitigate their high handed, gestapo like methods.

The Federal Bureau of Investigation sent men to Clarksville. Miss Lucy Mason, a prominent Virginia lady, spent weeks working on the case in the hope of bringing about a change of heart on the part of the local officials. Clarksville today is as solidly closed to TWUA or any other union as it has ever been.

City detective tells how it is

In our many years of experience, it is apparent that local law-enforcement agencies in some sections of the country are unwilling to protect union organizers and their adherents. Cases against the perpetrators of violence and assault upon union organizers are rarely prosecuted. In the few instances where the assailants are brought to trial, they are invariably acquitted. In more than 20 years of organizing the South we are not aware of a single conviction by a southern court for attacking union representatives or union employees.

The refusal by southern communities to act to prevent violence from being used against union adherents results in many cases from the absolute control exercised by textile employers over all phases of community life. The extent and effect of this control was revealed in the Anchor-Rome case heard by the 1950 Senate subcommittee. The Senate inquiry revealed that the treasurer of the company was a member of a grand jury which was considering indictments against strikers. The company, because of its position as a heavy taxpayer, had brought pressure upon a city detective to return a $1,000 reward it had paid to him pursuant to an advertisement of a reward for arrest and conviction of a person who shot a nonstriking employee. It turned out that the victim was mistaken for a striker by another scab. Detective W. B. Terhune of the police department of the city of Rome, Ga., testified most reluctantly about the pressure exerted upon him by city officials to return the reward.

"I have a wife and baby at home and I have to have a job and I have to get along * * * I could not take the chance of losing my job for one thousand dollars * * * well, you know how small towns are * * * even when lots of time you are right, you are wrong if they want to get rid of you."

The courteous vigilantes of South Boston, Va.

One of the most quiet-spoken, courteous and dedicated persons ever to work for any organization or company was the late Cree Radcliff, a field representative for TWUA, who in December 1946 was forced out of a hotel, and later made to leave the town altogether, in South Boston, Va., by a crowd of local vigilantes.

Cree Radcliff died just 2 years ago as a result of a heart attack at the conclusion of another harrowing experience at Elkin, N. C., which is also referred to in this testimony.

In Elkin, N. C., Radcliff had tried to assist in unionizing the Chatham Manufacturing Co., owned by the late Thurmond Chatham who served in the House of Representatives from the Fifth District of North Carolina.

In South Boston, Radcliff had gone to meet with employees of the Carter Fabrics Corp. which, at the time, was represented by a gentleman who later became Governor of Virginia and now serves in the United States House of Representatives.

Radcliff, a small and rather frail man, was not physically manhandled; indeed, the "vigilantes" who forced him out of the hotel and rode him out of town treated him with elaborate, if hypocritical, southern courtesy. Radcliff was warned in a perfectly decorous manner that he would be killed if he did not leave South Boston without delay.

Back in 1944 a very similar situation occurred in this same place when the Textile Workers Union of America conducted an organizing campaign at the plant of the Carter Fabrics Corp. At that time the mayor openly engaged in a campaign designed to intimidate workers who were voting in a National Labor Relations Board election. Premises rented by the union were broken into and property belonging to the organization was destroyed. The police made it very plain that they approved of such illegal conduct. Typical of the attitude of the local officials was the move made to prevent union representatives from addressing workers at the mill with the aid of a sound amplification system. Finding themselves without a local ordinance covering the situation the mayor called the town council into emergency secret session one morning to adopt a restriction against the use of loudspeakers and in the afternoon of the same day a young woman representing TWUA was arrested at the mill gates for merely attempting to set up sound equipment for a speech.

At that time a committee composed of local citizens, whose names we have, did make threats against the organizers and representatives of the Textile Workers Union of America. Mayor Harrell at the time gave Mr. Boyd Payton, State representative for TWUA, to understand that he wanted the union to quit the town and broadly hinted that the local police would make no move to halt violence used against union representatives.

Denial of means of communication

In the spring of 1954, we began to organize the employees of the Chatham Manufacturing Co., Elkin, N. C. Employees who tried to attend the union meeting, which we were compelled to hold in the woods, were stopped by a police roadblock which, by a seeming coincidence, the police had just decided to set up in order to make a road check of drivers' licenses on the road leading to the meeting place. Each of the employees who attended the meeting had his driver's license checked and was made clearly aware that his name was being reported to the company.

The Chatham Manufacturing Co. utilized other tactics besides surveillance to prevent union organization. One of the methods was to prevent the union from securing a building in which to meet.

Shortly after the Chatham campaign began, an effort was made to rent facilities for holding a meeting. The executive director of the Elkin YMCA was contacted and we requested permission to rent space in the Y. He replied that he could not see why we could not have space since the Y facilities were being used by various community and political organizations. He said, however, that he would first have to get the approval of the Y's board of directors. The next day the union was informed that the YMCA could not be used for union meetings. The board of directors of the Elkin Y consists of Chatham management personnel. In the months that followed, union committees of local

residents made repeated requests for the use of the Y but all were rejected. These same facilities were made repeatedly available to the employer "captive audience" meetings.

The union next turned to the movie theaters in Elkin for a place to meet but were turned down. The State Theater in Elkin had been standing idle for months. The union offered to rent it. The owner sent word that he would not rent the theater to the union for any purpose. The owner did rent the theater to an antiunion committee operating in the mill which held repeated antiunion rallies there.

We turned next to the schools. On June 4, 1954, secret arrangements were made with the Austin School to hold a union meeting. The school is 15 miles from Elkin. The union committee waited until the last day before advertising the meeting. Despite the short notice the meeting was packed. Over 500 people attended and a highly successful meeting took place. A suggestion that another meeting be held the following week was enthusiastically approved. The next day the county superintendent ordered that further use of the Austin School be denied.

Requests for the use of other schools were successively denied. The school principal of the Pleasant High School in Elkin candidly stated, "Chatham contributes a sum of money each year to our school-lunch program. Knowing how Chatham feels about the union, I personally cannot make a decision that might take away the children's lunch and milk program."

The union then tried the Surrey County courthouse at Dobson, N. C. This is 20 miles from Elkin. Here, the clerk of the court stalled until the union gave up in disgust.

While the search for a meeting place was going on, the owner of the motel in which the organizers lived warned that he would force them to move if they used their rooms as an office or meeting place.

Finally, the union was forced to hold its meeting in the woods. It was while the workers were going to this meeting that the police "road check" took place.

The Textile Workers Union of America hereby files with this brief for the information of the Congress a copy of a 41-page booklet entitled "All Rights Denied," which gives the full Elkin story in considerable detail.

Newspapers refuse to accept advertisements

At the 1954 Senate Labor Committee hearings on the Taft-Hartley Act, we presented many other shocking denials of the channels of communication to union representatives. We shall cite here only a few of such instances.

In Gastonia, N. C., the newspaper refused to publish a union advertisement urging southern mill owners to raise wages. We did not even appeal for union members. The newspaper in Gastonia is located in the heart of the cotton-mill area.

In Andersonville, S. C., one of the largest textile centers in the South, it is still impossible for us to obtain any advertisement in local newspapers.

In Hogansville, Ga., we were unable to hire a meeting place and an office. As a result, an organizing campaign was completely frustrated. We finally rented a theater in Grantsville, Ga. We scheduled a meeting and mailed letters of invitation to hundreds of people in nearby communities. One day before the scheduled meeting the theater owner advised us that we could not hold the meeting because tremendous pressure had been brought upon him.

In Piedmont, Ala., meeting facilities were denied us in a campaign carried on in the winter. We held our meetings in a tent.

Unable to purchase radio time

Only after many years of complaint to the Federal Communications Commission have we been able to obtain radio time in some parts of the South. Our scripts, in most instances, must be turned in to the radio station at least a week prior to the broadcast. These scripts are subject to severe and utterly unreasonable censorship.

II. THE NATIONAL LABOR LAWS OFFER NO RELIEF

The National Labor Relations Act which was designed to encourage collective bargaining has proved to be almost totally ineffective in protecting the personal security and constitutional rights of unionists. Two or three years after the illegal acts are committed the Labor Board may order the employer not to commit those acts again. Long before those years have elapsed, the organizers have been beaten up and driven out of town and all the pressures of the organized com-

munity have been brought to bear against the union campaign. Workers see their infant labor organization strangled without Federal intervention. The Labor Board's findings that the employer violated the law comes after the union has died and withered away. The decision against the employer is a postmortem.

The Darlington (S. C.) case

The law's inability to cope with the southern textile situation is illustrated by the following very recent event:

On September 6, 1956, we managed to win our first NLRB election in southern textiles in more than a year of intensive organizing efforts. Involved were the approximately 530 employees of the Darlington Manufacturing Co., Darlington, S. C., one of the plants in the Deering, Milliken & Co., Inc., chain. This is a profitable mill which was in the midst of an extensive modernization program at the time of the election. Six days later the board of directors of the company, headed by Roger Milliken, president of Deering, Milliken & Co., Inc., passed a resolution to close and liquidate the plant. During the course of the meeting, Mr. Milliken stated that he would not operate the mill as long as there was a hard core of union sympathizers in the plant. The mill was closed and its machinery and equipment sold on December 12 and 13, 1956.

We filed charges with the NLRB and appealed to the General Counsel of the NLRB to obtain an injunction preventing the company from selling the plant and executing its illegal plans to a point where it would be impossible to fashion effective relief. The General Counsel refused. Thereafter, he issued a complaint against the Darlington Manufacturing Co. The case is now being heard by an NLRB trial examiner. The General Counsel is asking only that the Darlington Manufacturing Co. pay back pay to its workers from the date of discharge to the actual sale of the plant, a matter of a few months, at best. No attempt was made or is being made to compel the employer to undo the disastrous effects of his patently illegal behavior. We asked the General Counsel to proceed against Deering, Milliken & Co., Inc., so that an order might issue compelling Deering, Milliken & Co., Inc., to offer reinstatement or preferential hiring to the Darlington workers at its neighboring plants in South Carolina. This, the General Counsel of the NLRB refused to do.

The Darlington case is but a single example of many similar tragedies throughout the South. These situations are eloquent proof of the inability of the Taft-Hartley Act to fulfill its declared purpose to encourage collective bargaining.

III. OTHER INSTANCES OF SUPPRESSION OF CIVIL LIBERTIES

The southern textile employer also uses less violent but equally effective means of suppressing civil liberties. These include passage of unconstitutional local laws prohibiting or severely restricting union activities, surveillance of union activities, and denial to the union of means of communication.

A. Restrictive local laws

Our efforts to organize the Limestone Mills of M. Lowenstein & Sons, Inc., also included an attempt to organize another Lowenstein mill a short distance away in Lyman, S. C. On June 7, 1956, a number of union organizers parked their car on a public highway a short distance from the gates of the Lyman, S. C., division of M. Lowenstein & Sons, Inc. They planned to distribute leaflets to workers coming out of the plant. No sooner had they alighted from their cars than they were met by town policemen who threatened them with arrest and prosecution if they distributed leaflets. The policemen relied on a recently enacted town ordinance which absolutely prohibited the distribution of literature in public places or door-to-door solicitation.

The union appealed to the Department of Justice and pointed out that the wrongdoers were public officials and that this type of ordinance had been declared unconstitutional by the United States Supreme Court. The Justice Department refused to act. It assigned as its reason the fact that this very ordinance had not been declared unconstitutional and that in accordance with the Supreme Court's decision in the case of *Screws* v. *United States* (325 U. S. 91), it could not, under existing law, successfully prosecute either the town officials who enacted the ordinance or the policemen who attempted to enforce it.

A further unconstitutional impediment to organizing is municipal ordinances which require union representatives to secure a license from local officials and pay prohibitive fees before they can organize employees. Failure to comply with these ordinances is made a criminal offense.

The unions have attacked the constitutionality of these ordinances in court and, after years of protracted litigation, have succeeded in having some of them declared unconstitutional. While these attacks are in progress, however, union organization is frustrated and constitutional rights denied. We describe below two such recent cases.

An ordinance of the city of Carrollton, Ga., required union organizers to pay $1,000 to obtain a license and $100 for each day that union activity was carried on. An organizer of the International Union of Electrical Workers, AFL–CIO, sought to organize the employees of two local concerns. He did not secure a license before beginning the organizational activity. As a result, a criminal action was brought against him which he sought to have enjoined in a Federal court (*Denton* v. *City of Carrollton*, 132 F. Supp. 302).

The ordinance was attacked as an unconstitutional deprivation of the right of free speech, public assembly, and dissemination of lawful information as well as on other grounds. The action sought a stay of the criminal proceedings in the State court. The Federal district court found that it had jurisdiction but it declined to exercise its jurisdiction for two reasons: First, because of its interpretation of a Federal statute which prevents a court of the United States from granting an injunction to stay proceedings in a State court; and second, because the case was wanting in equity for failure to show great and immediate danger of irreparable injury. The court did not consider a denial of freedom of speech, press, and assembly sufficient ground for equitable relief.

The union appealed to the United States Court of Appeals for the Fifth Circuit. A majority of this court reversed the district court's decision. It examined the "exaction euphemistically called a license tax, but which in its cumulative effect is exorbitant and punitive." It held that the license tax of $1,000, while large, would not alone, even if its legality were doubtful, present a case for equitable relief, but that when the additional sum of $100 for each day's activity by a "labor union organizer" is added, the payment of such a sum as a condition to testing the validity of the exaction presents a heavy burden and that to decline equitable relief in this instance would be to deny judicial review altogether (*Denton* v. *City of Carrollton*, 235 F. 2d 481). Needless to say, the organizing campaign suffered irreparable harm during the pending of this litigation.

The city of Baxley, Ga., is another southern town which has a union licensing ordinance. Its ordinance requires union organizers to pay $2,000 for a license and $500 for each member obtained. In 1954, two women organizers employed by the International Ladies' Garment Workers' Union, AFL–CIO, attempted to organize some of the workers in the city of Baxley. They did not apply for a license and were convicted of violation of the ordinance and sentenced to 30 days or a $300 fine. After the organizers were served with a summons for violating the ordinance, they instituted an action in the State court requesting that the ordinance be declared unconstitutional and that the enforcement of the ordinance be stayed. The lower State court dismissed the action and the dismissal was affirmed by the Georgia supreme court. The upper court held that the unconstitutionality of the ordinance could be asserted as a defense to the criminal proceeding. Said the court: "If the ordinance is invalid, by reason of its unconstitutionality, or for any other cause, such invalidity would be a complete defense to any prosecution that may be instituted for its violation" (*Staub* v. *Mayor of Baxley*, 211 Ga. 1, 838, S. E. 2d 606, 608).

As directed by the court, the organizers raised the constitutional question before the criminal court. Their plea was denied. The Federal questions were again raised on appeal from the judgment of conviction. The appeals court dismissed the appeal without considering the merits. It held that the appeal was improper because the appeal bond had been filed with the wrong city official. It so held despite a clear showing that this had been brought about by knowing misrepresentations of the city's officials. On appeal from this determination, the Georgia Court of Appeals held that the bond had been "properly approved and certified" and directed that the case "be returned to the superior court for decision on its merits" (*Staub* v. *Baxley*, 91 Ga. App. 650, 86 S. E. 2d 712, 715). On retrial on the merits, the Supreme Court of Georgia held the ordinance valid and affirmed the conviction. On the second appeal to the Georgia Court of Appeals, that court declined to consider the merits, holding that the constitutional attack had been improperly framed because only specific sections of the ordinance had been attacked and not the ordinance as a whole and because the organizers were required to make an effort to secure a license before they could attack the ordinance (*Staub* v. *City of Baxley*, 94 Ga. App. 18, 935, E. 2d 375). No con-

tention of this character had been advanced by the city at any time. The case has been appealed to the United States Supreme Court (probable jurisdiction noted January 14, 1957, 1 L. ed. 2d 319).

The union has been compelled to suspend organizing until the decision of the United States Supreme Court. It is highly unlikely that prounion sentiment among the workers will survive the legal contest.

IV. CIVIL RIGHTS STATUTES INADEQUATE

The existing Federal civil rights statutes fail to provide any relief against the civil rights fiasco engineered by southern textile employers. If the exercise and enjoyment of constitutional rights, privileges, and immunities are to be secured, it is necessary that additional legislation embodying both substantive and procedural changes in the existing statutes be enacted. These statutory additions should effect both the civil and criminal rights and remedies presently available. It is not enough to broaden enforcement of existing statutes by equitable intervention as the Dirksen bill, S. 83, appears to do. This is not to say that provisions for injunctive relief are undesirable. On the contrary, such relief provides a singularly proficient means of overcoming the almost insurmountable prejudice of local juries. Moreover, it introduces a preventive remedy in an area where locking the door after the horse has escaped is clearly unavailing.

However, additional powers of enforcement must be linked to additional rights to enforce in order for desirable results to be achieved. The Dirksen bill seeks to amend title 42, United States Code, section 1985, which provides, among other things, for a civil suit for damages for conspiracy to interfere with the right to equal protection of the laws. The United States Supreme Court has held this section inapplicable to interference by a person or group of persons with the constitutional rights of speech or assembly (*Hardyman* v. *Collins*, 341 U. S. 651). The Dirksen bill would not amend this statute to provide this protection. Instead, it provides for injunctive relief to redress the violation of presently inadequate statutory rights. It thus fails to afford relief for the fundamental constitutional rights of speech, press, and assembly. In this respect we support title XII of the Humphrey bill, S. 510, which provides this added substantive protection together with necessary remedial powers of enforcement. However, even the Humphrey bill fails to hold accountable persons who have knowledge that an interference with civil rights will occur and the power to prevent its occurrence, but who fail to exercise that power. This is a significant loophole, which, as has been demonstrated above, encourages and is directly responsible in many instances for civil rights infractions. We suggest that this bill be amended by adding thereto the following:

"Any person or persons who fail to prevent or to aid in preventing any of the wrongs described in this section which he or they had knowledge were about to occur and power to prevent it, shall be legally responsible to the same extent as the actual perpetrators."

Insofar as the remedy of injunction is concerned, we think that both the Dirksen and Humphrey bills could be strengthened. Both bills make permissive rather than mandatory an application by the Attorney General for injunctive relief. The preservation and protection of constitutional rights should be mandatory. In this respect, we call this committee's attention to the provisions of the Celler bill introduced in the House of Representatives which makes it the duty of the Attorney General to apply for such relief.

The Humphrey bill seeks also to strengthen the criminal side of the civil rights statutes (18 U. S. C. 241, 242). The Dirksen bill does not. These statutes are no less deficient than their civil counterparts and are in equal need of reinforcement.

However, the Humphrey bill appears to impose greater penalties for a conspiracy to interfere with civil rights than for an actual interference. There is no apparent reason for this distinction and both should be treated with equal severity. In addition, the criminal sanctions in Senator Humphrey's bill should be amended as described above to hold criminally accountable persons who have knowledge that an interference with civil rights will occur and the power to prevent its occurrence, but who fail to exercise that power.

The Humphrey bill also defines certain classes of civil rights that are protected by criminal penalties. We are in agreement with the listing but would add thereto specific protection for the rights of freedom of speech, press, and assembly. Thus, subsection 3 of the proposed section 242A of title 18, United States Code, should be amended to read as follows:

"The right to be immune from physical violence or the threat thereof applied to exact testimony or to compel confession of crime or alleged offenses or to interfere with or prevent the dissemination of views, ideas or opinions or the solicitation or recruitment of membership or support in a lawful organization or cause."

We would also add a subsection 7 to read as follows:

"The right to freedom of speech, press, and assembly."

It is not enough to improve the wording of civil rights statutes. The effective administration and enforcement of such statutes is equally necessary. We, therefore, support the establishment of a separate Civil Rights Division in the Department of Justice, staffed by an increased number of competent and experienced attorneys and headed by an attorney of outstanding ability who has demonstrated not only technical expertise but also an impartial and nonpartisan devotion to the protection of civil rights. We also support the establishment of a Commission on Civil Rights, adequately staffed and equipped to exercise a continuous and effective surveillance of this problem.

CONCLUSION

The evidence summarized herein, illuminates a field where collective bargaining has not been accepted, where unions are struggling to emerge or maintain life, where employers utilize any means, including violence, to stamp out the early fragile unions and to crush those unions which have taken the first steps towards maturity, where whole communities are mobilized against the right to organize and to exercise the constitutional freedoms of speech, press, and assembly, where employers play hide and seek with a hesitant Federal administrative agency charged with the responsibility of clearing away obstructions to the rights of employees to organize and maintain unions.

Southern textiles represent an outrageously clear example of the need for corrective legislation to secure constitutionally guaranteed civil rights.

STATEMENT BY EARL W. JIMERSON AND PATRICK E. GORMAN, PRESIDENT AND SECRETARY-TREASURER, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA (AFL-CIO)

The Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, has a membership of more than 325,000 men and women of many races, religions, creeds, and national origins. They reside in every State of the Union, Alaska, and Canada. The AMCBW has more than 500 affiliated local unions. It and the locals have contracts with thousands of employers in the meat, retail, poultry, egg, canning, leather, fish processing, and fur industries.

Since the AMCBW was first organized in 1896, members have sworn "to keep inviolate the traditions of the trade union movement, namely, never to discriminate against a fellow worker because of creed, color, or nationality." This is part of the membership oath of our union. The swearing to this is the very first action a man or woman takes as a member.

The oath, Mr. Chairman, is symbolic of our union's concern about bigotry. To us, racial and religious intolerance and discrimination are not only an abominable evil. They are also a meaningful practical danger to our union and to its goal of improving the welfare of the workers in its industries.

Throughout our history, as throughout the history of all labor organizations, attempts have been made to create bitter racial and religious tensions in order to sap the strength or break the union. Today is no exception. The White Citizens' Councils, which attempt to incite white workers against their Negro fellow workers, are often led by men who are in the forefront of the drives to do harm to the living standards of both.

We mention this to show that organized bigotry is not a means of defending a tradition and a way of life, as we are told, but often a cruel, unhuman means toward a very selfish and materialistic end. Intolerance and bigotry are used to drive down the wages and other economic gains, not only of the group discriminated against but almost equally of the group which has been incited to do and is doing the discriminating.

In our many industries we have found that the harmony which comes from the recognition of the equal worth and dignity of all men is beneficial to the individuals, their groups, the union, the industry, and the community. An example of this is Seabrook Farm, a giant corporation farm and food-processing firm in New Jersey, which our union has had organized for over 15 years. Here a poten-

that tinderbox of hatreds once existed, but today 8 races and some 19 nationalities work harmoniously together. The meat-packing industry is another example. There bigotry was in past decades incited for selfish ends, but that terrible page of history is irrevocably turned to the immense benefit of all.

In these instances the work against bigotry were largely nongovernmental actions. It was the work of the union, community leaders, and sometimes management. Such activity is good and lasting. Many argue it accomplishes more than legislation. Perhaps so, but just as legislation and governmental actions have their limits so has the activity of individuals and nongovernmental groups.

For example, organizations, including ours, can do nothing or very little to guarantee a man the right to vote, or to assure the protection of his person and property, or to guarantee that his race or religion will not deny him a job, or to assure he will not suffer the indignity of a Jim Crow school, bus, or train. That requires governmental action.

Because we recognize the need for both approaches, we appeal to this committee to further the cause of human right and dignity by approving legislation which will permit the Federal Government to play its rightful and necessary role in civil rights. The AMCBW strongly urges that this committee speedily approve the President's recommendations contained in S. 83.

We believe, as other groups have stated they believe, that the President's proposals are a basic minimum. They are good as far as they go, but they, unfortunately, do not do enough.

We believe other bills, S. 427, S. 428, S. 429, and S. 468, will meet a much larger need in the civil-rights field. We urge this subcommittee to consider at its earliest opportunity the additional protections provided by these measures.

NATIONAL COUNCIL OF THE CHURCHES OF CHRIST
IN THE UNITED STATES OF AMERICA,
New York, N. Y.

To the Senate Judiciary Subcommittee on Constitutional Rights:

My name is Ralph M. Arkush. I am the recording secretary of the general board of the National Council of the Churches of Christ in the United States of America. The council is constituted by 30 Protestant, Anglican, and Eastern Orthodox communions, with a total membership of 35 million. The general board is the governing body of the national council between the triennial meetings of the assembly.

On October 5, 1955, the general board adopted the following statement of policy:

"Religious liberty and, indeed, religious faith are basic both historically and philosophically to all our liberties.

"The National Council of Churches holds the first clause of the first amendment to the Constitution of the United States to mean that church and state shall be separate and independent as institutions, but to imply neither that the state is indifferent to religious interests nor that the church is indifferent to civic and political issues.

"The National Council of Churches defends the rights and liberties of cultural, racial, and religious minorities. The insecurity of one menaces the security of all. Christians must be especially sensitive to the oppression of minorities.

"The exercise of both rights and liberties is subject to considerations of morality and to the maintenance of public order and of individual and collective security.

"Religious and civil liberties are interdependent and therefore indivisible.

"The National Council of Churches urges the churches, because of their concern for all human welfare, to resist every threat to freedom."

The third paragraph, pledging the council to the defense of the rights and liberties of minorities, is relevant in the Senate's consideration of proposed civil-rights legislation, and the entire pronouncement is my warrant for calling it to the attention of the Senate Judiciary Subcommittee on Constitutional Rights.

Let me quote also a relevant paragraph from a series of resolutions adopted by the general board on December 1, 1955:

"The national welfare and the effectiveness of America's witness for freedom in the world community are so critically influenced and conditioned by our behavior in the race situation that we urge all agencies of government—local, State, and Federal—to resist the temptation to allow possible partisan political advantage to inhibit them from the responsible and courageous maintenance of human rights and the furtherance of justice."

Appended to this statement are:

A. A quotation from a commentary prepared by staff officers of the national council, and filed with the Senate Judiciary Subcommittee on Constitutional Rights on November 10, 1955. The quotation is the portion of the commentary that has to do particularly with the third paragraph of the pronouncement included above.

B. Statement by American Baptist Convention.

C. Statement by Congregational Christian Churches.

D. Statement by Episcopal Church.

E. Statement by Methodist Church.

F. Statement by Presbyterian Church, U. S. A.

G. Statement by United Lutheran Church.

I am not authorized to express a judgment as to the relative merits of the various bills which the subcommittee will consider. It is evident, however, from the official actions quoted above and the appended statements, that the concern of the council will not be met, as far as national legislation is involved, by action less effective in substance and in orientation than that which the President of the United States has been for some time urging, and has now again proposed, indicated in four points, in his "annual message to Congress on the state of the Union," January 10, 1957. These points are also included in this subcommittee's prints of an Omnibus Civil Rights Act of 1957.

It is difficult to see how, with action less resolute and less specific, the rights and liberties guaranteed by the Constitution are to be upheld in practice.

Respectfully submitted.

RALPH M. ARKUSH,
Recording Secretary, National Council of Churches.

APPENDIX A

Extract from statement of November 10, 1955, by staff officers of the National Council of Churches to the Senate Judiciary Subcommittee on Constitutional Rights:

"The concern of a large body, such as the National Council of Churches, for small groups is a matter both of conscience and of self-interest. Tolerance, understanding, brotherhood—these are of the essence of high religion. Religion denies its own essential truth when it persecutes or ignores a persecution.

"And there is no valid basis for defending the rights of a majority which is not equally valid for defending those of a minority.

"The security of these rights lies chiefly in a general attitude, frame of mind, or atmosphere prevailing in the society in question, which will be quickly dissipated if any rights are violated and if any minority is persecuted or denied its just affirmation.

"We cannot therefore remain indifferent or passive when Jews, Roman Catholics, Protestants, or adherents of other religious faiths are persecuted or made second-class citizens by totalitarian regimes, or other governments, on any continent. Still less can we remain indifferent when we witness the erosion or violation in our own country of the rights of American Indians, Negroes, conscientious objectors, or Jehovah's Witnesses."

APPENDIX B

Extract from resolutions adopted by the American Baptist Convention, June 22, 1956:

"2. CIVIL RIGHTS

"We recognize that during the past 10 years great strides have been made in race relations in America and that it was a logical next step for the Supreme Court to declare 2 years ago that our public schools must be integrated to assure equality of educational opportunity.

"We fully support the Supreme Court decision, and deplore the resistance to this decision in certain States where integration of public education has met organized opposition.

"Our convention has spoken out against segregation and has repeatedly urged church leaders to work as unceasingly for a nonsegregated church as for an integrated society.

"We rejoice that integration is progressing in the churches of our American Baptist Convention. Recent staff and missionary appointments testify to our intent as a religious fellowship to see that there is no racial wall of separation

in our common service in the kingdom. At the same time, we confess the urgency of accelerating this trend, which still is marked by futile effort, insincerity, and unwillingness to change.

"Since the probability of developing integrated church congregations is contingent on the spread of open housing, we acknowledge our responsibility to work for conditions in our communities which will assure to persons the right to rent or own a home anywhere in the community solely on the basis of personal preference and financial ability rather than on the basis of race, creed, or color.

"Thus, in prayer and in penitence for our own failures, we pledge ourselves to work at all levels for justice, equality, and brotherhood among the races of America."

APPENDIX C

Extracts from social resolutions adopted by the general council of the Congregational Christian Churches, June 20–27, 1956:

"We note with gratification that our Nation, through decisions made by its highest Court, is now committed to eradicate segregation, based on race, from public services and institutions, including schools and colleges."

* * * * * * *

"It is our firm conviction that the constitutional rights of all persons to engage in free and open discussion of all the issues in race relations must be assured, along with the right to vote and to join organizations of their own choice, without becoming the objects of economic reprisals, threats, or acts of violence."

APPENDIX D

Extract from The Church Speaks: Christian Social Relations, general convention, Episcopal Church, 1955:

"FULL FELLOWSHIP OF RACES IN CHURCH AND COMMUNITY

"Whereas Almighty God, through His Son our Lord Jesus Christ, has offered salvation to all the races of mankind; and

"Whereas our church has declared through the general convention, the Lambeth Conference, the Anglican Congress, the National Council of Churches of Christ in the United States of America, and the World Council of Churches, that unjust social discrimination and segregation are contrary to the mind of Christ and the will of God as plainly recorded in Holy Scripture; and

"Whereas, this church in thanksgiving can proclaim that now in every diocese and missionary district every race has full representation in its councils; and

"Whereas, the Supreme Court of these United States has ruled that every citizen shall have open access to the public schools and colleges of the entire Nation: Therefore be it

"*Resolved*, That the 58th General Convention of the Protestant Episcopal Church in the United States of America now commends to all the clergy and people of this church that they accept and support this ruling of the Supreme Court, and, that by opening channels of Christian conference and communication between the races concerned in each diocese and community, they anticipate constructively the local implementation of this ruling as the law of the land; and be it further

"*Resolved*, That we make our own the statement of the Anglican Congress that 'in the work of the church we should welcome people of any race at any service conducted by a priest or layman of any ethnic origin, and bring them into the full fellowship of the congregation and its organizations.'"

APPENDIX E

Extract from The Methodist Church and Race, adopted by the general conference, 1956:

"The teaching of our Lord is that all men are brothers. The Master permits no discrimination because of race, color, or national origin.

"The position of the Methodist Church, long held and frequently declared, is an amplification of our Lord's teaching. 'To discriminate against a person solely upon the basis of his race is both unfair and unchristian. Every child of God is entitled to that place in society which he has won by his industry and his character. To deny that position of honor because of the accident of his

birth is neither honest democracy nor good religion' (the Episcopal Address, 1952 and 1956).

"There must be no place in the Methodist Church for racial discrimination or enforced segregation * * *"

APPENDIX F

Extract from Social Pronouncements of the 166th General Assembly of the Presbyterian Church in the U. S. A., May 1954:

"RACIAL AND CULTURAL RELATIONS

"We receive with humility and thanksgiving the recent decision of our Supreme Court, ruling that segregation in the public schools is unconstitutional—with humility because action by our highest Court was necessary to make effective that for which our church has stood in principle; with thanksgiving because the decision has been rendered with wisdom and unanimity.

"*I. Implementing the Supreme Court decision*

"We urge all Christians to assist in preparing their communities psychologically and spiritually for carrying out the full implications of the Supreme Court's decision.

"We call upon the members of our churches to cooperate with civic organizations, neighborhood clubs, and community councils as effective means for the accomplishment of racial integration in the public-school system, and to remember that integration must be indivisible in character, insisting that teachers as well as pupils be accorded full opportunity within the school system on the basis of interest, ability, and merit, without reference to race.

"*II. Responsibilities of the church*

"We commend our church for its continued efforts to make the law of Christ relative to all areas of the church's life. We particularly commend the increasing number of local churches which have become racially and/or culturally integrated and have learned the joy of full Christian fellowship. * * *"

APPENDIX G

Extract from a Statement on Human Relations, by the executive board of the United Lutheran Church in America and the statement of that church's convention, October 1956, on desegregation:

"HUMAN RIGHTS AND RESPONSIBILITIES

"Consistent Christian living requires that men shall seek to accord to each other the observance of the following rights and their matching responsibilities:

* * * * * * *

"6. To share the privileges and obligations of community life, having equal access to all public services, including those related to health, education, recreation, social welfare, and transportation, and receiving equal consideration from persons and institutions serving the public.

"7. To exercise one's citizenship in elections and all the other processes of government, having freedom for inquiry, discussion and peaceful assembly, and receiving police protection and equal consideration and justice in the courts.

"*Statement on desegregation*

"The ULCA, recognizing its deep involvement in the moral crisis confronting the United States in the current controversy over desegregation occasioned by the Supreme Court decision of May 17, 1954, affirms the Statement on Human Relations adopted by the executive board of the ULCA and the Board of Social missions (April 1951), and calls upon all its congregations and people, exercising Christian patience and understanding, to work for the fullest realization of the objectives of that statement.

"We believe that Christians have special responsibilities to keep open the channels of communication and understanding among the different groups in this controversy. Our congregations are encouraged to contribute to the solution of the problem by demonstrating in their own corporate lives the possibility of integration.

"We furthermore state that due heed ought to be given the following principles by all and especially by those holding civil office, since they hold their power under God and are responsible to him for its exercise:

"(1) The public school system so necessary to the maintenance of a democratic, free and just way of life, must be upheld and strengthened.
"(2) All parties to the present controversy are in duty bound to follow and uphold due process of law, and to maintain public order."

STATEMENT OF KENNETH LEE SMITH, ASSOCIATE PROFESSOR OF APPLIED CHRISTIANITY IN THE CROZER THEOLOGICAL SEMINARY, CHESTER, PA., ON BEHALF OF THE AMERICAN BAPTIST CONVENTION

I am Kenneth Lee Smith, associate professor of applied Christianity in the Crozer Theological Seminary, Chester, Pa. Crozer is one of the accredited theological seminaries of the American Baptist Convention, the organization on whose behalf I appear before you today. The American Baptist Convention wished to go on record at this time in favor of the passage of a civil-rights bill during this session of the 85th Congress.

The American Baptist Convention has for many years expressed a growing concern that every citizen of the United States, regardless of race, creed, or color, should enjoy the basic freedoms guaranteed by the Constitution of the United States, especially those rights embraced by the 14th and 15th amendments of the Constitution. In tracing the resolutions of the American Baptist Convention over the last few years we witness a steadily rising concern over civil rights. The 1953 convention declared that "the American Baptist Convention has repeatedly voiced its concern regarding discriminatory practices in America, and has urged equal treatment of all citizens regardless of race, creed, or color." And it resolved to all its "agencies" and "local churches to remove such practices where they exist among us."[1] The 1954 convention resolved that "we commend the United States Supreme Court in its historic decision outlawing segregation in public education." It also urged "American Baptists to increase their opposition in other areas of segregation—housing, employment, recreation, and church participation."[2] One of the resolutions adopted by the convention in 1956 said: "We recognize that during the past 10 years great strides have been made in race relations in America. * * * Our convention has spoken out against segregation and had repeatedly urged church leaders to work as unceasingly for an unsegregated church as for an integrated society. * * * Thus, in prayer and in penitence for our failures, we pledge ourselves to work at all levels for justice, equality, and brotherhood among the races of America."[3] Many other resolutions could be cited, but these will suffice to show that American Baptists have manifested a growing concern regarding civil rights. To this end, we feel that the 85th Congress should enact a civil-rights bill which will move in the direction of implementing the religious and ethical ideals of the Christian faith.

The American Baptist Convention makes this request at this time because it feels that our Nation and our world is passing through a very critical period. Moreover, we fell that the question of civil rights is very high on the list of those problems which are crucial. What the United States does regarding civil rights at this time may well determine not only the future of the democratic ideal in our society, but also, since we have a crucial role to play in the future of the free world in the face of Communist expansion, the future of the free world as well. Civil rights are therefore crucial for the future of both the democratic ideal in America and the democratic ideal in the world.

Regarding the importance of civil rights for the American ideal, we may record the following: "Our constitutional democracy is founded on the idea of providing justice for all and the equality of opportunity according to individual capacity unimpaired by factors of race, color, or station, or birth, or religion. This is declared simply and unmistakably in our Constitution and tradition, but it is an overwhelming task requiring cotinuous struggle and constant readjustment. * * * To provide the quality of justice and a balance of power in the conflicts of men and groups is the basic problem toward which solution our democratic way is dedicated. But this is not an automatic process, and unless we can generate an ethical sensitivity and a loyalty to a justice that transcends our own group demands, our vast interdependent society is always in danger of falling into exploitation and coercion. * * * Therefore, democracy itself is dependent on the moral quality of the relations of its people and their capacity to soften

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[1] Resolution of the American Baptist Convention (May 25, 1953).
[2] Ibid. (May 28, 1954).
[3] Ibid. (June 22, 1956).

self-interest and prejudice by a loyalty and power that lifts them beyond purely selfish group, class, or racial demands." [4] We do not believe that justice can be legislated. However, we do feel that the excesses of injustice which arise from prejudice may be curtailed by just laws.

Regarding the importance of civil rights for the future of the free world, we may record the following: "By some kind of empathy the United States has come to be identified in the world mind with the equality of men. * * * Part of this reputation has been deserved, but * * * in light of our professions * * * (there are facts) which do positive damage to the whole cause of freedom and democracy in these days in which the United States has emerged into a position of world leadership. One could even argue that the correction of racial abuses in this country is so vital and integral to the democratic cause to which the American people have dedicated themselves that there can be no quibbling over the remedy if our whole structure is not to be mortally affected. (Laws) should be used (when necessary), since the arguments for gradual social change has too long and too often been abused to be any longer acceptable if we would continue to fill our role of leadership in the free world. It is an extraordinary fact that a world never noted for its racial tolerance in theory or practice has come to look on the United States as a symbol of equality, and that the oppressed turn to America in the hope of finding understanding and an untarnished record. The burden of responsibility thus placed upon us is a heavy one. * * * When we are concerned by foreign reactions (to our racial policies) we would do well to remember that in our position we no longer have a private life, and that what we do at home takes on an enlarged, perhaps often exaggerated, importance in the eyes of the world as evidence of what an anxious world can expect of us." [5] In order to insure, therefore, both the integrity of the democratic ideal at home and abroad, the American Baptist Convention does hereby respectfully request that a civil rights bill be passed at this time.

The American Baptist Convention is concerned to stress at this time that every citizen of the United States should be assured of the basic rights guaranteed by the Constitution of the United States. These rights, as they were defined in The President's Commission on Civil Rights (1948) include: (1) the right to safety and security of person; (2) the right to citizenship and its privileges, including the right to vote; (3) the right to freedom of conscience and expression; and, (4) the right to equality of opportunity. In order to implement these rights the American Baptist Convention respectfully requests that a civil rights bill be submitted by this committee to the United States Senate. This bill we feel should include a least the proposals which have been made by the Attorney General of the United States before this committee. These proposals, as we understand them, include: (1) The creation of a bipartisan Commission to investigate asserted violations of law in civil rights, especially involving the right to vote; (2) the creation of a civil-rights division within the Department of Justice to be composed of presidentially appointed assistant Attorneys General; (3) the enactment by the Congress of new laws to aid in the enforcement of voting rights; and (4) the amendment of the laws so as to permit the Federal Government to seek from the civil courts preventive relief in civil rights. This bill does not include all the features which we consider to be important. However, we do feel that it represents an important step in the right direction. We consider it to be a meaningful bill because it provides for (*a*) the right to vote; (*b*) the right to security of person; and (*c*) gives the Attorney General the power to seek injunctions when these principles have been violated.

STATEMENT IN SUPPORT OF CIVIL RIGHTS LEGISLATION SUBMITTED BY THE UNITED STATES SECTION OF THE WOMEN'S INTERNATIONAL LEAGUE FOR PEACE AND FREEDOM

Prepared by Mrs. Dorothy Hutchinson, member, national board

The Women's International League for Peace and Freedom, believing that peace in the United States and in the world is inseparable from the protection of individual rights and freedom, is gratified whenever legislation is designed to secure and protect the civil rights of United States citizens. We are encouraged to

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[4] A. T. Rasmussen, Christian Social Ethics (New York, Prentice-Hall), 1956, pp. 229–230.
[5] The Annals of the American Academy of Political and Social Science (March 1956), pp. 132, 135.

note that more than 45 bills on this subject have recently been introduced in Congress which indicates that, if hearings on these bills can be expedited, there may be a better chance than ever before to assure the passage of civil-rights legislation this session of Congress.

Hitherto the failure to protect adequately the civil rights of our Negro citizens has permitted flagrant injustices which have filled decent Americans with shame and have dangerously undermined America's reputation as the leader among the nations of the so-called free-world. There is, therefore, no time to be lost in improving our practice of the democracy we preach.

The Women's International League for Peace and Freedom believes that there are several interrelated areas where civil-rights legislation is needed:

(1) The right to vote freely and secretly for political candidates is basic to all other rights. We Americans see and say clearly that failure to insure this right is the basic evil of totalitarianism. We must, therefore, realize that our own Nation cannot claim to be a properly functioning democracy so long as any of our citizens are denied the right to vote or in any way intimidated or interfered with in their free exercise of that right.

(2) The right to protection of life and limb, free from injury or threat of injury, whether it be one accused of crime, a uniformed member of the Armed Forces, or an innocent bystander, whether a Negro in Montgomery or Boston, a Chinese or Japanese in California, a Mexican in Arizona, all should be secure from injury to their person or property which may be inflicted by reason of race, creed, color, national origin, ancestry, or religion, or imposed in disregard of the oderly processes of law. As a number of bills before this committee point out, such protection is necessary to secure the rights, privileges and immunities provided by the Constitution, to safeguard our form of government in the various States, and to promote respect for human rights and fundamental freedoms for all in accordance with our obligations under the United Nations Charter.

(3) The right to employment on the basis of one's qualifications for the job and the right of receiving equal wages for equal work is also basic. A minority group which is generally debarred from all but menial jobs or is paid less than other workers who do equivalent work, suffers an economic disadvantage which prevents improvement in its health and educational status or the decrease in crime and delinquency which accompany poverty, ill health and ignorance. Thus subtly but surely our national well-being is undermined.

(4) The right to share fully in public educational facilities; public health and hospital facilities; public transportation facilities; public recreational facilities must also be insured to all citizens. All citizens are subject to the same tax laws and none can justly be deprived of the benefits provided by the expenditure of these taxes. The Supreme Court decisions regarding the unconstitutionality of segregation in the public schools of the Nation and in the buses of Montgomery, Ala., were heartening steps in the right direction. Their implementation and the broadening of the application of the constitutional principles involved to include the other areas listed above should be included in current legislative bills dealing with civil rights.

(5) The right to buy land and to buy or rent homes in whatever location one's income and tastes permit should also be insured to ever American. However, at the present time, housing available to Negroes is so scarce and of such poor quality that crowding and lack of sanitary facilities are a health hazard to the Negroes themselves and also to the communities in which they live. And the inability of Negroes of high educational and economic status to obtain suitable housing is a scandal.

The Women's International League for Peace and Freedom wishes to call attention to the interrelationships of the political, economic, educational, transportation, health, recreational and housing rights detailed above and to point out that none of them can properly be ignored by a nation which calls itself a democracy.

We also call to your attention that the Negro citizens of Montgomery, Ala., because of the lack of necessary judicial and legislative guaranties of their rights, over a year ago undertook a militant but dignified and completely nonviolent campaign for less discriminatory seating practices on the public buses. Their demands were more than supported by the subsequent Supreme Court decision declaring unconstitutional all segregation on Montgomery buses. But hideous acts of violence perpetrated by white citizens of Montgomery against the leaders of the bus boycott have gone unpunished. We feel a profound admiration for the method which the Negroes of Montgomery have used to achieve their rights without resort to hate or violence and with amazingly consistent adherence to the technique of Gandhi and the loving spirit of Jesus Christ.

We recognize the importance of encouraging local and State authorities to undertake the needed improvements in the protection of civil rights, and we recognize also the importance of the timing of such Federal action as may be needed. But it is clear that the Montgomery bus boycott is symptomatic of the determination of the American Negro not to wait indefinitely for his rights as a first-class citizen and that legislative recognition of this fact is already overdue.

In closing, we emphatically remind you that the whole world is watching the American Negro's struggle for his civil rights. Money contributions have come from all over the world to aid the bus boycott in Montgomery. The press of the whole world has carried stories of the boycott's progress, the violence used against the boycotters, the Supreme Court decision against bus segregation and the violence of white against Negroes which followed the attempt to integrate the buses.

Two-thirds of the world's population is colored. How quickly and effectively we act to guarantee the civil rights of our colored citizens will determine our moral standing in the international community. So we need civil rights legislation not only to satisfy our own consciences but also to prevent the development of world cynicism about our professions of democracy.

The Women's International League for Peace and Freedom, therefore, heartily approves current proposed legislation setting up a Commission on Civil Rights to study their present status and ways to improve legislation in this area.

The mimimum we seek are those measures embodied in S. 83, providing for an additional Assistant Attorney General, establishing a bipartisan commission on civil rights in the executive branch of the Government, providing means of further securing and protecting the right to vote and strengthening civil rights statutes. However, we much prefer the provisions of the subcommittee print because they come nearer to covering all of the five points mentioned above. We hope the full Judiciary Committee will report a bill promptly and make every effort to get a satisfactory rule for early floor action, so that the matter may quickly reach the hands of the Senate.

AMERICAN CIVIL LIBERTIES UNION,
New York, N. Y. March 6, 1957.

Hon. THOMAS C. HENNINGS, Jr.,
Chairman, Senate Judiciary Committee,
United States Senate, Washington, D. C.

DEAR MR. HENNINGS: We have been informed that in the course of the hearings by the Senate Judiciary Subcommittee on the pending civil rights legislation, Merwin K. Hart, president of the National Economic Council, made the following statement about the American Civil Liberties Union:

"We said these measures are of Communist origin. Back in 1935 the Communist Party prepared a booklet entitled 'The Negroes in a Soviet America,' in which the Negroes of the South were urged to revolt and set up a separate government and to apply for admission to the Soviet Union. Of course nothing came of this at that time. But the forces then at work under Communist inspiration are in part the forces that have inspired the American Civil Liberties Union and the NAACP to press for so-called civil rights legislation.

"Mr. Ralph de Toledano had an article in the American Legion magazine of May 1954 on this business of civil liberties. His story was mostly about the American Civil Liberties Union. He stated certain conclusions of which the following were two:

"'1. In the established sense of the word the American Civil Liberties Union is not a Communist front—even though Earl Browder, in sworn testimony at the time he was the Communist leader in the United States—characterized it as a "transmission belt" for Communist ideas.

"'2. It is certainly of tremendous value to the Communist movement. In the guise of serving civil liberties it disseminates to all corners of the country the kind of propaganda which best serves Communist purposes by spreading dissension, confusion, and false information.'

"While it has been claimed that Mr. Roger N. Baldwin, who for many years was the guiding spirit of the American Civil Liberties Union, has in recent years somewhat modified his views—yet on page 7 of the 30th Anniversary Yearbook (published in 1935) of the Harvard College Class of 1905 of which he was a member, he wrote:

"'I have continued directing the unpopular fight for the rights of agitation, as director of the American Civil Liberties Union; on the side engaging in many efforts to aid working class causes. I have been to Europe several times, mostly in connection with international radical activities, chiefly against war, fascism, and imperialism, * * * I am for socialism, disarmament, violence, and compulsion. I seek social ownership of property, the abolition of the propertied class and sole control by those who produce wealth. Communism is the goal * * *.'

"Mr. de Toledano quotes Roger Baldwin as having included the following passage in an article Baldwin wrote for the propaganda organ Soviet Russia Today.

"'Those of us who champion civil liberties in the United States and who at the same time support the proletarian dictatorship of the Soviet Union are charged with inconsistency and insincerity. * * * If I aid the reactionaries to get free speech now and then, if I go outside the class struggle to fight censorship, it is only because those liberties help to create a more hospitable atmosphere for working class liberties. *The class struggle is the central conflict of the world; all others are incidental. When that power of the working class is once achieved, as it has been only in the Soviet Union, I am for maintaining it by any means whatsoever.*' [Italics Baldwin's.]

"From: 'Statement before subcommittee of the Judiciary Committee of the United States Senate, on the pending so-called rights bills, February 27, 1957, by Merwin K. Hart, president of the National Economic Council, 7501 Empire State Building, New York 1, N. Y.' (pp. 2–3)."

We consider Mr. Hart's comment wholly inaccurate and unfair and request that the following correction be inserted into the hearing record.

With respect to the statement by Mr. de Toledano, we quote from a public reply we made in August 1954:

"In categorically denying the charges contained in those conclusions, the ACLU wants to credit the author with stating clearly that it is 'not a Communist-front.' The union, by its very nature, is diametrically opposed to the tyranny of communism, as to every other form of tyranny. It defends only the civil liberties of Communists, as it defends those of all other people: and it defends those of Communists for only one reason, that civil liberties must be defended for everybody if they are to be secure for anybody.

"The ACLU wants to credit the author with also stating clearly that 'it has done tremendously important and socially useful work in fighting against discrimination and segregation of Negroes, for the extension of franchise in areas where some have been denied the vote, against precensorship of books and films, etc. It has also entered the courts in behalf of rabble-rousing crackpots like Father Terminiello, defending a free speech principle.' That last phrase is the key to understanding all the union's work, which is solely for defense of civil liberties principles."

With respect to Mr. Hart's statement concerning Roger Baldwin, the following statement made by Mr. Baldwin on April 9, 1953, is a direct and honest repudiation of these views.

"After the rise of Hitler I was enough alarmed by the threatened spread of Fascist dictatorship to express some rather extreme views in favor of the Soviet dictatorship and working-class power. For years I had entertained the hope, shred by so many liberals, that the Soviet Union would devleop despite its dictatorship, toward a genuine democracy and economic freedom.

"Events proved that hope unfounded. Growing evidence from the 1936 purges convinced me that the proved evils of the Communist regime far outweighed any possible good. The clinching evidence of the infamous Nazi-Soviet pact of 1939 ended any slight hopes I retained. Since then I have been a consistent opponent of the Soviet dictatorship, of communism, and of all cooperation with Communists. Events have also convinced me that progress is not fairly measured in terms of 'class struggle.'

"So far as the views I expressed in 1934 under the threat of fascism appear to deny or compromise the principles of democratic liberties, I repudiate them as completely as events themselves have repudiated for liberals any choice whatever between dictatorships."

Mr. Baldwin's complete devotion to democratic liberties has been shown by deeds both at home and abroad. His worldwide recognition as a champion of civil liberties was capped by the invitations extended by Gens. Douglas MacArthur and Lucius Clay to advise on civil-liberties problems in Japan and

Germany after the war, which he accepted. His reports and counsel were roundly praised by the generals. General MacArthur said on December 30, 1949:

"Roger Baldwin's crusade for civil liberties has had a profound and beneficial influence upon the course of American progress. With countless individuals finding protection in the nobility of the cause he has long espoused, he stands out as one of the architects of our cherished American way of life."

General Clay said on November 27, 1949:

"At my request he visited Germany to investigate our progress in this field and to give us his recommendations as to further steps we might take. His objectivity, sincerity of purpose, and ability to separate the wheat from the chaff, made his visit of exceptional value to both military government and to the Germans. I am sure that within a short time he did much to instill his faith and beliefs in German minds.

"While doing so, he helped all of us who had associated with him, just as through the years he has helped our country to a better understanding of tolerance and the dignity of man. We shall miss his constructive influence."

Sincerely yours,

PATRICK MURPHY MALIN,
Executive Director.

PREFATORY REMARKS TO STATEMENT OF RUDOLPH T. DANSTEDT, DIRECTOR, WASHINGTON BRANCH OFFICE OF THE NATIONAL ASSOCIATION OF SOCIAL WORKERS, WASHINGTON, D. C.

Mr. Chairman, I am Rudolph T. Danstedt, Director of the Washington Branch Office of the National Association of Social Workers.

The Chairman will recall that the last time I appeared before him was in July of last year when he conducted an inquiry into juvenile delinquency in St. Louis, Mo. The subject and place are interwoven with the remarks I have to make today. Any student of abnormal behavior, of which juvenile delinquency is a somewhat dramatic manifestation, will agree that any person or group which is assigned an inferior status largely because of race or nationality is going to fight back some way. Juvenile delinquency is one of the methods of such fighting back. You are not admitted fully into larger society of which you are a part, so you fight it and seek ways to revenge yourself upon it. Members of our association, a large number of whom work with children and youth in child care agencies, youth centers, Scouts, Y's, can attest to a clear causal relationship between discrimination on account of race and juvenile delinquency, family disorganization and community disorganization.

When St. Louis, Mo., decided a scant 3 years ago, to make its educational, welfare and recreational services available to everybody regardless of race due in part to the prodding of Federal law and the courageous leadership of the late Mayor Darst, that community and that State became a better place in which to live and earn a living for everybody. It was particularly appropriate that the National Association of Social Workers should choose St. Louis in 1953 as a place in which to hold its convention, at which we adopted a platform on civil rights which is alluded to in a statement I am attaching to these remarks, and would like to have included as a part of the record of these hearings.

May I conclude these remarks by referring to three elements which we believe are minimum requirements for any effective civil rights legislation.

1. Protection of the rights to political participation with such measures provided which would insure access to the legal services of the Federal Government.
2. Creation of a civil rights division in the Department of Justice under the direction of an Assistant Attorney General which would be concerned with enforcement of civil rights.
3. The establishment of a Commission on Civil Rights in the executive branch of the Government with such a Commission possessing the responsibility for investigating, study, and reporting and the right to issue subpenas.

Mr. Chairman—I know that you have been a devoted worker for the welfare of youth. Granting the full rights of citizenship with its concomitant opportunities to assume the full responsibility of citizenship is basic to a better and happier youth and a better and happier America.

I appreciate the opportunity to speak to this committee. I can assure you that our association will gladly do its share under the laws which we hope are enacted to move forward into a better partnership among all our people.

STATEMENT OF RUDOLPH T. DANSTEDT, DIRECTOR, WASHINGTON BRANCH OFFICE NATIONAL ASSOCIATION OF SOCIAL WORKERS, WASHINGTON, D. C.

I am Rudolph T. Danstedt, director, Washington branch office of the National Associaton of Social Workers. This association, which is composed of social workers employed in governmental and private agencies, Catholic, Jewish, and Protestants, has long been interested in adequate legislation for civil rights. Since the creation of our association, our only test for membership in this association has been that of competence and ability.

The experience of our members in recreation programs, clinics and hospitals, family and child counseling programs—governmental and voluntary programs—has convinced us that practices which tolerate discrimination directed at any part of our population, or permit barriers to isolate groups of individuals, are destructive of an individual sense of personal worth and bring maladjustment, mental ill health, family disorganization, and crime. We therefore believe that discrimination in any form must be eradicated wherever it exists.

In May 1956, our association held its convention in St. Louis, Mo., and we established a platform on civil rights which reads in part as follows:

"The strength and character of the American Nation derive from its people who, coming from many parts of the world, bringing with them varying religious beliefs, and endowed with varying physical characteristics, have been able to build a common democracy based on mutual respect and belief in equality of opportunity. Acceptance of differences among individuals—whether of religious belief, political opinion, appearance, or background—is basic to social progress and freedom.

"The democratic ideal must be achieved in the minds of free men and is, therefore, dependent upon a wide range of measures to broaden the opportunities and advance the welfare of all people. In addition, however, government at all levels has a positive obligation to assure those conditions which foster this ideal and to prevent such actions by individuals and groups as undermine it."

At this time, our association is not supporting any particular piece of legislation, but we believe that satisfactory legislation should contain as a minimum some of the following elements:

1. Protection of the right to political participation with such measures provided which would assure access to legal services of the Federal Government.
2. Creation of a Civil Rights Division in the Department of Justice under the direction of an Assistant Attorney General which would be concerned with enforcement of civil rights.
3. The establishment of a Commission on Civil Rights in the executive branch of the Government with such a Commission possessing the responsibility for investigation, study, and reporting and the right to issue subpenas.

The platform of our association also advocates accessibility, without regard to racial distinction, of government operated or regulated public facilities and the elimination of discrimination in employment.

There is probably no more important legislation before the Congress than the various measures that have been introduced dealing with civil rights. Those of us who have worked with deprived people, the maladjusted and juvenile delinquents are convinced that one of the important causes in these forms of personality and community disorganization is the restriction upon the rights and liberties of a substantial part of our population. It is our earnest hope that significant civic rights legislation will be enacted in the first session of this Congress. Our association is prepared to give full assistance in securing such legislation.

STATEMENT BY JOHN T. BLUE, JR., AMERICAN COUNCIL ON HUMAN RIGHTS, WASHINGTON, D. C., IN REGARDS TO THE URGENT NEED FOR CIVIL RIGHTS LEGISLATION

I am John T. Blue, Jr., director of the American Council on Human Rights which is a cooperative program supported by five collegiate sororities and fraternities. Alpha Kappa Alpha Sorority, Delta Sigma Theta Sorority, Kappa

Alphi Psi Fraternity, Sigma Gamma Rho Sorority, and Zeta Phi Beta Sorority. Our constituent member organizations have a membership of 70,000. Our program directly involves 120,000 college students and alumni. Our membership is gravely concerned about the inability of the States and the Federal Government to maintain law and order. The elected officers in some States have counseled and abetted the disfranchisement of several million citizens both white and Negro which is a violation of the spirit of their oath in which they pledge themselves to uphold the Constitution of the United States.

The concept of State rights has been twisted and distorted so that in effect it is presumed to allow the defiance and frustration of the decision of Federal courts. Some elected officers have encouraged, counseled, and indeed, proclaimed nullification of court decisions and Federal actions which would give to sorely burdened citizens rights clearly bestowed in our Constitution. This is a devious form of subversion and cannot but ultimately shake our constitutional system if the practices become more widespread.

The zealousness of many Southern State officials to preserve racial practices which are but barbaric survivals of the institution of slavery has blinded them. They have on the issue lost sight of the concept of State's responsibility which is a concomitant of States rights. They have eschewed and rejected the States responsibility in many cases. Our system of government is predicated on the principle of parsimony: the least government—the better, and correlatively: the least legislation and law—the better. Legislation is to guide and to remedy. When States adequately carry responsibility, there is no need for, nor has there been, Federal action on a problem. But when States default on their responsibilities or are helpless to cope with a problem, the Federal Government is obligated to render in all ways consistent with the constitutional system.

The facts indicate that civil-rights legislation is long overdue. Appointed and elected State officers have in many cases contrived means of preventing citizens from registering and voting. Terrorism, intimidation, and assassination supplement the administrative blocs to the exercise of the franchise. Large proportions of those qualified by age and citizenship who are interested in exercising the privilege and responsibility of voting cannot do so. Twenty to fifty-five percent of the potential voters determine who will represent the people of a jurisdiction.

Citizens who are unable to exercise the franchise are unable to influence legislation or the policies and practices of administrative officers. There has been written into law a host of statutes requiring that citizens submit to segregation in every phase of life involving contacts between races. These States and local ordinances and statutes prescribe the following: colored schools and white schools, colored entrances and white entrances, colored seats and white seats, colored athletics and white athletics, colored taxis and white taxis, ad infinitum. These practices enforced by law are survivals of the ritual practices associated with slavery.

The policy statements used to justify this is phrased in terms of * * * "separate but equal." However, practices of legally enforced separation have been clearly established to be separate and unequal. Legally enforced separation has resulted in less adequate services and inferior education. Unequal inconvenience is imposed on a class of citizens by law. Further, this enforced separation is intended and does convey to all the participants and observers the idea that a class of American citizens is inferior and subordinate. It is to be noted that these statutes provide that enforced separation does not apply when the Negro is a servant accompanying a white person. The best avenue of redress against this type of legislation is in the final analysis the effective enfranchisement of the people enduring these travails. As voting citizens, they will be able to ameliorate their lot by seeing that local law and policy is made consistent with the American ideal of equality and brotherhood.

Some opponents of this legislation have strived to create the impression that there is no problem requiring civil-rights legislation. The vast amount of legislation recently enacted, and now pending in the legislatures, as well as the violence, bombings, and intimidations making headline news over the past few years, contradicts these assertions. By State law, it is illegal: (1) to advise a person that he might seek redress in a court of law, (2) to organize an association, to seek to influence pending legislation dealing with race, (3) to hold membership or contribute money to organizations like NAACP and the like, etc. This labyrinth of legislation is intended to be a means of stifling any organizations through which the Negro people have lawfully and peaceably sought to redress these wrongs. The registration of names of those holding membership

and of those making donations are then a matter of public record so that private persons and organizations like the white citizens councils can subject the members and donors to reprisals. Just as bad is the fact that this legislation is directed toward making access to judicial remedies more difficult. Thus a people are oppressed. * * *

Not only has a labyrinth of legislation been passed (or is in process), but we have witnessed the creation of an administrative maze. The function of the elaborate and complex system of administering local functions is to avert compliance with Federal court decisions and Federal law concerning civil and constitutional rights. The maze is purposely made intricate so that the costs and time required to achieve redress of rights from the State or local agency can be prohibitive. The maze is also intended to obscure the lines of responsibility and to cloak State and local officers with the immunity of the State to be sued in the Federal court without its own consent pursuant to article XI of the United States Constitution.

Intimidation, violence, and economic pressure are the instruments used by private persons and organizations to keep the Negro subordinated and to deprive him of the civil and constitutional rights essential to first-class citizenship. The intimidation, violence, and reprisals are, if not aided and abetted by administrative and elective officers, encouraged and tolerated. Law-enforcement efforts when a racial issue is involved is lax and futile. Negro people are still subject to violence for "being sassy to a white person" and the perpetrators of the violence are only infrequently prosecuted or convicted. The threat of economic losses and fear for safety of person and property is intended to motivate most Negroes to forego the exercise of the rights and privileges of citizenship. This dogma is called: voluntary segregation. The chance that "voluntary segregation" will be adopted is slight. The southern Negro suffers so acutely from the impositions and the barbarities, and deprivations inherent in segregation that he is determined to strive for equal treatment and equal protection under the law. Neither threat nor violence has yet made them compromise their pledge to attain these ideals.

There is a general tendency for witnesses against the civil-rights bills now under consideration to take the position that the proposed legislation is directed against a section of the country. This is not so. As Federal law it will be enforced in the whole Federal jurisdiction and persons will seek relief under these statutes in the North, East, South, and West. No doubt the frequency of such cases will be more numerous in the South where the persons who support segregation are vocal and dominant. These extremists under the guise of States rights are willing to go to unreasonable extremes to maintain racial subordination. Most astonishing is the Sampsonian complex of the legislatures. With malevolent spite, they are willing to abolish the services of the State to its people—white and Negro, if they are not allowed to unlawfully practice segregation. However, not all southern people feel obdurate and belligerent on this issue. Many southern white people are alarmed at the threats to wreak wrath upon the Negro if segregation is ended and deplore collapse of law and order. Many southerners, white and Negro, are appalled at the willingness of legislatures to enact laws and resolutions which attack constitutional government. Furthermore, there will no doubt be white citizens who will seek succor under these bills when they have been enacted, just as there are now southern white persons who seek redress in the Federal courts when their right to register and vote is denied. All this must be borne in mind when we examine the need for Federal action in the field of civil rights.

The American Council on Human Rights asked Mr. Alexander Faison to come before this committee because his having been deprived of the right to register is typical of the way the administrative maze and labryinth of law is used to coerce citizens and frustrate their exercising their constitutional rights.

Mr. Faison is a veteran of the Korean conflict who was honorably discharged from the United States Air Force with the rank of staff sergeant. He is presently a legal resident of Seaboard, N. C. and a sophomore at North Carolina College at Durham which is the State liberal arts college for Negroes.

On May 12, 1956, Mr. Faison went to Mrs. W. L. Taylor, the registrar of Seaboard precinct seeking to be registered so that he might become a voter. After a cursive oral examination to determine whether on not he was literate enough to qualify to vote, the registrar, told Mr. Faison that he had failed to satisfactorily pronounce and define certain words and was thus disqualified from registering.

Mr. Faison, a student doing satisfactory college work, was astounded and secured the services of Mr. James R. Walker, Jr., attorney at law, and returned to the place of registration. Upon inquiring of the registrar, Mrs. Walker, about the grounds for rejecting Mr. Faison, the attorney served notice that Mr. Faison had declared his intention to contest his deprivation of the right to vote. Mr. Taylor, husband of the registrar, thereupon, ordered that the store which served as the official place of registration be cleared and uttered the threat, "I'll get you," to Mr. Walker.

Some 45 minutes later, the Attorney Walker was stopped on the highway between Seaboard and Weldon by a deputy sheriff who said that a warrant was being sworn against Mr. Walker charging him with disorderly conduct and with trespassing. Mr. Walker pointed out that unless the officer actually had the warrant in hand, an arrest could not lawfully be made at that moment. However, to expedite matters, he (Mr. Walker) would wait for the warrant to be sent out to the deputy so that the sheriff's officers could be spared the inconvenience of serving it later.

Mr. Walker was arrested when the warrant arrived, and released on bail that afternoon. Later, Mr. Walker was convicted on the charges of disorderly conduct and of unlawful trespass in a magistrate's court. Upon appealing the case to a superior court of the State of North Carolina, the conviction in the magistrate's court was allowed to stand. But this was not all—Mr. Walker was charged with assault on a female and convicted. Mr. Walker has appealed the case and is seeking justice in the State supreme court.

What of Mr. Alexander Faison who is sometimes referred to as "the cause of all this trouble"?

On the night of May 12, a local businessman with whom Faison's family had done business for years swore out a warrant against Mr. Faison charging him with having passed a bad check. The alleged bad check had been given to the local businessman in December of 1955. An officer of the law and three cars full of men went to the house of a Negro family who were close friends of the Faison family with the warrant looking for Mr. Alexander Faison. These friends of Mr. Faison were particularly alarmed by the fact that the three carloads of men were accompanying the officer. There was the possibility that the sheriff might not, if he tried, be able to protect a person in his custody from so numerous a band of persons if they were determined to wreak violence. Consequently, they telephoned Mr. Faison's father who told them that the officer had not called at the Faison home. The father had his young son leave the community so that his safety would be assured.

Mr. Alexander Faison's father and brother went into town and contacted an officer holding the check and paid the amount of the check and court costs. Thus the business of the bad check was concluded.

It would be remiss not to point out that the amount of the check was $2.80, and that the Faison family had done considerable business on credit with the man to whom the check had been issued. Furthermore the check had been given to the businessman some 6 months earlier and no doubt been in his hands for some time. A check with the bank where Mr. Faison had his account revealed that the check had been returned because it was not on the proper type of check. At no time was the balance in his account too small to cover the outstanding checks. Ordinary business courtesy usually dictates that a petty check which goes is returned to a businessman to be collected by contacting the person issuing it rather than by the expense and trouble of warrant and arrest, particularly when the person is a longtime customer of the business and whose financial reputation is good. The juxtaposition of the two events—the business of the check and the registration—gave the local Negro citizens the clear impression that Mr. Alexander Faison was being pressured because of the registration difficulty.

Mr. Alexander Faison has pursued the matter of his being qualified to vote in the State courts of North Carolina. It is significant that the State's attorney did not contest whether or not Mr. Faison was sufficiently literate to vote. Rather the argument in defense of the registrar's having refused to register Mr. Faison was that Mr. Alexander Faison did not reside in the precinct in which he attempted to register.

This is in the face of the fact that Faison's father and brother, who live in the same household as Mr. Alexander Faison, are registered and vote in the precinct where Alexander Faison applied. Furthermore, the brother just mentioned was registered by Mrs. Walker a few minutes before she rejected Alexander Faison.

The trial revealed that there were no officially designated precinct boundaries in many places in North Carolina. Replies to inquiries reveal that no action has

been taken nor is apparently contemplated to establish and proclaim definite official precinct boundaries where such action is needed.

Thus far the courts of the State of North Carolina has upheld the action of the registrar, Mrs. W. L. Taylor, in refusing to register Alexander Faison. At great expense and trouble he is exhausting the administrative and statutory remedies which the State of North Carolina have made available.

We cite this case because it illustrates the difficulties which citizens must be prepared to deal when they are determined to exercise the privilege and duties of citizenship in the face of the tyranny of local sentiments. Thousands of citizens less advantaged than Mr. Faison have neither the means to cope with the administrative maze and the labyrinth of law, nor the iron courage to stand up to the pressure of an incident like the bad-check business. Several other citizens of Northampton County have begun suits to secure the right to vote since Mr. Faison has pressed his suit. All of this litigation is being pursued by local people at their own expense. The southern Negro is determined to peaceably and legally redress his wrongs. Civil-rights legislation must be enacted so that the Federal Government can adequately assume responsibility and take action to end these violations of constitutional rights.

The American Council on Human Rights feels that the civil-rights bill passed by an overwhelming bipartisan vote in the House of Representatives last year is a start toward the Federal Government assuming its responsibility for the protection of constitutional and civil rights.

1. We urge the adoption of the provision to establish a Commission on Civil Rights. We urge that the phrase "by reason of race or color" be made to read, "by reason of, and incident to race, color, and nationality origin" so that the scope of the Commission's work will be of benefit to Puerto Rican and Mexican-Americans as well as the Negro.

2. We support the proposal to create a special Civil Rights Division in the Department of Justice. The mandate of the Congress to the Department of Justice is an affirmation of the Federal Government's responsibility for protecting the individual citizens constitutional rights.

3. We most vigorously importune this committee to authorize the Department of Justice to take civil action to prevent unconstitutional deprivation of the right to vote in elections for Federal officers.

In the final analysis, perhaps the most precious right of all in a democracy is the right to vote. With such a right adequately assured, all other rights are potentially assured. Nothing is more basic to democratic society than the power vested in the people to choose the men and women who will make the laws and operate the Government for the people.

Our Federal Constitution recognizes this basic right to vote in numerous ways. Article I of the Constitution gives Congress the power and duty to pass the laws necessary to protect elections for Federal office. The 15th amendment to the Constitution provides that the right of citizens of the United States to vote in State and local elections shall not be denied or abridged by the United States, or by any State on account of race, color, or previous condition of servitude. The 14th amendment, moreover, prohibits any State from making or enforcing laws which abridge the privileges and immunities of citizens of the United States and from denying them the equal protection of the law.

To carry out these purposes, the Congress years ago passed a voting statute which provides that all citizens shall be entitled and allowed to vote in all elections, State or Federal, without distinction based upon race or color. By this action, the Congress did intend to provide satisfactory protection for the right to vote.

The fact is, the right to vote has not been adequately protected. Negroes especially have been deprived of the right to vote in many parts of this country. Obviously, the present voting statutes have not been enough to guarantee this most precious right.

Analysis has shown two defects of the existing statutes:

(1) They do not protect voters in Federal elections from unlawful interference with their voting rights by private persons; it applies only to those who act "under cover of law." Thus, only public officials, not individuals or private organizations, can be effectively prevented from unconstitutional interference in a person's right to vote.

(2) They fail to lodge in the Department of Justice any authority to invoke civil remedies for the enforcement of voting rights. Most important: the Attorney General is not presently authorized to apply to the courts for preventive relief in voting cases.

In order that the intent of the Constitution and present statutes can be properly carried out, the Congress should amend section 1971 of title 42, United States Code, to permit (1) action against anyone, whether acting under cover of law or not; (2) civil suits by the Attorney General in right-to-vote cases; and (3) permit first resort to Federal courts where constitutional rights are at stake; (4) ACHR urges the adoption of the proposal to authorize the Attorney General to seek civil remedies in the civil courts for enforcement of existing civil-rights statutes. The labyrinth of legislation and the administrative maze which were described impose formidable handicaps on the citizen who seeks to redress their rights in the courts. Criminal statutes are presently available but they have the disadvantage of being primitive. Furthermore, criminal statutes can only be invoked after a right has been infringed, but the proposal to enable the courts to give civil relief means that an impending infringement can be prevented, and that right quickly without extensive litigation.

NORTH CAROLINA, NORTHAMPTON COUNTY: IN THE SUPERIOR COURT

ALEXANDER FAISON, PLAINTIFF, VS. MRS. W. L. TAYLOR, DEFENDANT

COMPLAINT

Plaintiff, complaining of the defendant, alleges and says:

1. That plaintiff is a Negro citizen and resident of Northampton County, State of North Carolina, and is more than 21 years of age; that plaintiff is a high school graduate, a second year college student at North Carolina College in Durham, North Carolina, and a veteran of the United States Air Force, having been discharged from the United States Air Force with a superior efficiency rating, with an excellent character rating and as a staff sergeant; that plaintiff is well able to read and write any section of the North Carolina Constitution and any section of the United States Constitution in the English language; that plaintiff is well able to read, write and understand any nontechnical matter in the English language and is for all purposes a literate person.

2. That defendant is the duly appointed registrar for voting registration of the Seaboard Precinct in Northampton County and was serving in that capacity during the registration period immediately preceding the primary elections of the spring, 1956; that defendant is also a citizen and resident of Northampton County, State of North Carolina.

3. That on or about the 12th day of May 1956 plaintiff presented himself to the defendant as an applicant for registration as a voter in order to vote and participate in the Primary Elections of the spring 1956, and in order to vote and participate in subsequent primary elections and other elections in accordance with the privileges and rights of a registered voter; that plaintiff was, at the time that he presented himself to the defendant registrar for registration, as above-mentioned, a citizen and resident of Northampton County and had been such for more than 23 years and had resided in the Seaboard Precinct, in particular, for more than 23 years next preceding his presenting himself to the defendant registrar for registration; that plaintiff still resides in Seaboard Precinct in Northampton County; that plaintiff is a natural-born citizen of the United States of America, having been born in Northampton County, State of North Carolina, of parents who were also natural-born citizens of the United States of America; that plaintiff is 24 years of age; that plaintiff, at the time he presented himself for registration, met all the qualifications specified and required by law for registered voters and particularly the qualifications set out in North Carolina General Statutes 163-25, and plaintiff still meets such qualifications; that plaintiff was not and is not now within any of the exclusions from electoral franchise as specified by North Carolina General Statutes 163-24, or any other provisions of law; that plaintiff has never been registered as a voter in North Carolina.

4. That upon presenting himself to the defendant registrar for registration on or about the 12th day of May 1956 the plaintiff was given a purported literacy test which the defendant presumed to administer pursuant to the supposed requirements of North Carolina General Statutes 163-28, and pursuant to the supposed requirements of Article VI, Section 4, of the North Carolina Constitution; that defendant administered the supposed literacy test to the plaintiff by requiring the plaintiff to read from a carbon copy of typewritten matter which, as plaintiff is informed and verily believes and so alleges, was a synopsis of or a

treatise or tract on the North Carolina Constitution rather than the exact text of the North Carolina Constitution; that the matter which plaintiff was required to read was barely legible, the printing thereon being faint and worn; that plaintiff was required by defendant to repronounce certain words and to define and interpret certain words which appeared on the carbon copy of the matter given to plaintiff by the defendant during the so-called literacy test; that defendant and plaintiff differed in opinion as to the pronounciation, definition, and interpretation of certain words; that following this purported literacy test and this humiliating ordeal, defendant informed the plaintiff that plaintiff had failed to pass, to the satisfaction of defendant, the so-called literacy test administered to the plaintiff by defendant; that defendant informed the plaintiff that her refusal to register the plaintiff was predicated upon his showing on the so-called literacy test; that, though plaintiff is a literate person and can read and write any section of the Constitution with reasonable facility and can read and write any nontechnical matter with more than average facility, the defendant willfully refused and declined to register the plaintiff because plaintiff, presumably, did not read and write to the satisfaction of the defendant.

5. That plaintiff knows that other applicants for registration, who are members of his race and who presented themselves to the defendant, were given dictation by the defendant as a part of their literacy test; that the defendant dictated from a copy of the material which she used for her so-called literacy test and required the applicants to write what she dictated and as she so dictated; that defendant presumed to grade applicants who received dictation from her on speed of taking dictation and on the spelling of words dictated; that defendant refused to register many persons of plaintiff's race because of their failure to satisfy defendant as to their ability to take dictation in accordance with the speed and spelling requirements and grading standards which she used.

6. That plaintiff is informed and believes and so alleges that subjection by the defendant registrar of applicants to the so-called literacy test is a treatment extended only to applicants of plaintiff's race, to wit, the Negro race; that plaintiff is informed and believes and so alleges that persons of the defendant's race, to wit, the white race, are not so humiliated and harassed by the so-called literacy test, but are registered without subjection and reference to the so-called literacy test; that plaintiff is informed and believes and so alleges that he was subjected to the so-called literacy test solely and only because of his race and color; that plaintiff knows of many other persons of his race who were denied registration by the defendant solely and only because of the so-called literacy test; that plaintiff is informed and believes and so alleges that defendant has not denied registration to any white person by reason of the so-called literacy test; that North Carolina General Statutes 163–28 gives to the defendant the unchecked and illegal discretion to administer the so-called literacy test to applicants of plaintiff's race only and to deprive such of them of the franchise as do not read and write to the defendant's satisfaction.

7. That plaintiff was entitled and is entitled to be registered without submission to the so-called literacy test and without submission to its humiliation and ordeal for the reasons that:

(a) Both Article VI, Section 4, of the North Carolina Constitution and North Carolina General Statutes 163–28 are in conflict with the Due Process Clause of the Fourteenth Amendment to the United States Constitution and are unconstitutional, in that both provisions fail to provide any standards, guidance, or restraint by which the defendant-administrative officer is to be guided or constrained in administering the so-called literacy test; in that both provisions clothe the defendant-administrative officer with arbitrary and unchecked discretionary power to deprive plaintiff and others of the right to vote; in that the statute permits the registrar to administer, at her will, a test on dictation, reading and writing speed, pronunciation and definition of words, spelling, and ability to read from faint carbon copies of matter, such as was done by defendant when plaintiff applied to be registered as a voter.

(b) Both Article VI, Section 4, of the North Carolina Constitution and North Carolina General Statutes 163–28 are in conflict with the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution and are unconstitutional, in that, because of the unlimited discretion and arbitrary power given to defendant-administrative officer, both provisions permit the administration of the registration laws with uneven hands and evil eyes, in the manner interdicted by the United States Supreme Court,

to the extent that discrimination based solely upon race or color of the applicant can be practiced and is being practiced without obvious reference thereto.

(c) Both Article VI, Section 4, of the North Carolina Constitution and North Carolina General Statutes 163–28 are in conflict with the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and are unconstitutional because of the proviso in both provisions which arbitrarily allows and requires the registration of certain classes of persons without submission to a literacy test and for the further reason that practically all of the classes of persons arbitrarily exempted from submission to a literacy test are persons of the Caucasian race, thus placing the burden of the literacy test, for the most part, totally on members of the plaintiff's race, to wit, the Negro race.

(d) Both Article VI, Section 4, of the North Carolina Constitution and North Carolina General Statutes 163–28 are in conflict with the Privileges or Immunities Clause of the Fourteenth Amendment to the United States Constitution and are unconstitutional, in that as a citizen and resident of the United States, of North Carolina, of Northampton County, and of the Seaboard Precinct, plaintiff, through the said provisions, has been arbitrarily deprived of the privilege and right of the franchise and in that the normal expected and customary application and operation of these two provisions is to arbitrarily, capriciously, and unreasonably deprive numerous citizens and residents otherwise entitled to the privilege and right of the franchise of such privilege and right.

(e) Both Article VI, Section 4, of the North Carolina Constitution and North Carolina General Statutes 163–28 are in conflict with the Fifteenth and Seventeenth Amendments and to the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and are unconstitutional, in that both provisions permit discrimination based solely and only upon the race and color of the applicant for registration and both provisions in practical operation and application do effect immeasurable discrimination against plaintiff and members of his race, in that both provisions have resulted in the disfranchisement of large numbers of Negro citizens solely and only because of their race and color and in the disfranchisement of the plaintiff, in particular, because of his race and color.

(f) Both Article VI, Section 4, of the North Carolina Constitution and North Carolina General Statutes 163–28 are in conflict with the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment and with the Fifteenth and Seventeenth Amendments to the United States Constitution and are unconstitutional, in that the so-called literacy test which is provided for in both provisions is in and of itself an arbitrary, capricious and unreasonable requirement, incapable of just and even application, and this is particularly true insofar as both provisions require the reading and writing of a legalistic and technical document such as is the Constitution of North Carolina; in that the two provisions set up an unreasonable classification of applicants for registration with applicants who can read and write any section of the Constitution in the English language being placed in one class and being eligible to vote and with applicants who cannot read and write all sections of the Constitution in the English language being placed in another class and being totally disfranchised.

(g) So much of North Carolina General Statutes 163–28 as reads: "and shall show to the satisfaction of the registrar his ability to read and write any such section when he applies for registration and before he is registered" is in conflict with the Due Process Clause of the Fourteenth Amendment of the United States Constitution in that the said section clothes the defendant administrative officer with unlimited discretionary and arbitrary power and provides no standard, guidance or restraints to guide the said defendant administrative officer, thus purportedly authorizing the defendant to arbitrarily and capriciously deprive plaintiff and others, at will, of the privileges and rights of the franchise.

(h) Both Article VI, Section 4, of the North Carolina Constitution and North Carolina General Statutes 163–28 are in conflict with the Due Process Clause, the Privileges or Immunities Clause and the Equal Protection Clause of the Fourteenth Amendment and with the Fifteenth and Seventeenth Amendments to the United States Constitution and are unconstitutional, in that no provision of North Carolina law provides a literacy standard for voting registrars, in that the applicant for registration as a voter has no guarantee under North Carolina law that the registrar is a person qualified educationally and academically or who is otherwise qualified to decide the applicant's literacy according to the presumptive and purported literacy standards set up in the two provisions abovementioned; in that North Carolina General Statutes 163–14 (4), which authorizes

the appointment of registrars, does not even require that the registrars appointed be literate by any standard.

(i) Both Article VI, Section 4, of the North Carolina Constitution and North Carolina General Statutes 163–28 are in conflict with the Due Process Clause of the Fourteenth Amendment to the United States Constitution and are unconstitutional, in that neither of the two abovementioned provisions provides for an appeal from or review of the registrar-administrative officer's finding that the applicant for registration is not able to meet the so-called literacy standard; in that the applicant has no appeal to any governmental body in North Carolina from the registrar's finding and decision that the applicant does not meet the so-called literacy standard; that an applicant's right to vote in North Carolina is made to hinge and depend upon the sole, unchecked and capricious discretion of a registrar whose findings and decisions on the applicant's literacy are not made subject to administrative or judicial review. Plaintiff further particularly alleges that both provisions are invalid and unconstitutional as applied to him because of the matter pointed out in this Paragraph.

(j) Both Article VI, Section 4, of the North Carolina Constitution and North Carolina General Statutes 163–28 are in conflict with the Due Process Clause of the Fourteenth Amendment to the United States Constitution and are unconstitutional, in that the term "shall be able to read and write any section of the Constitution * * *" is vague, indefinite, uncertain and does not apprise an applicant of what is expected of him before he meets the qualifications of a voter, in that the term in North Carolina General Statutes 163–28 "shall show to the satisfaction of the registrar his ability to read and write any such section * * *" is vague, indefinite, uncertain and does not apprise an applicant of what is expected of him before he meets the qualifications of a voter; in that neither provision is sufficiently explicit to give an applicant notice of what preparations he can and must make in order to qualify as a voter.

(k) North Carolina General Statute 163–28 is invalid and unconstitutional, by reason of the fact that the General Assembly of North Carolina had and has no authority or power under the Constitution of North Carolina or under any other provision of law to delegate to a registrar and to a registrar's sole and unappealable discretion the duty of deciding and passing upon an applicant's qualifications for exercise of the franchise, insofar as the qualifications pertained to and are concerned with the applicant's literacy; by reason of the fact that North Carolina General Statutes 163–28 is particularly repugnant to and in conflict with Article II, Section 1, of the North Carolina Constitution, in that it is an unlawful delegation of legislative power; by reason of the fact that North Carolina General Statutes 163–28 is particularly repugnant to and in conflict with Article I, Sections 10 and 37, of the North Carolina Constitution; by reason of the fact the North Carolina General Statutes 163–28 is particularly repugnant to and in conflict with Article IV, Sections 1, 2, 8, 12, and 22 and Article I, Section 35, of the North Carolina Constitution, in that no effective procedure of judicial review is provided to an applicant who has been denied the privileges and rights of the franchise by a registrar; by reason of the fact that North Carolina General Statutes 163–28 is repugnant to and in conflict with the above-cited constitutional provisions for reasons other than those assigned and by further reason of the fact that North Carolina General Statutes 163–28 is repugnant to and in conflict with provisions of the North Carolina Constitution which are not herein cited or enumerated.

(l) Both Article VI, Section 4, of the North Carolina Constitution and North Carolina General Statutes 163–28 are invalid and unconstitutional as applied to plaintiff by reason of the matter set out in subparagraph (a) through (k) of this Paragraph, both inclusive.

(m) Since the literacy test is unconstitutional by the standards of both the North Carolina Constitution and the United States Constitution and since plaintiff meets all other requirements for registration as a voter, plaintiff was and is entitled to be registered by the defendant as a voter without subjection to or reference to the so-called literacy test.

8. That plaintiff brings this action pursuant to the provisions of the Uniform Declaratory Judgment Act, North Carolina General Statutes, Chapter I, Article 26; that plaintiff seeks herein a declaration of his right to be registered as a voter without regard to the so-called literacy test; that plaintiff seeks a declaration declaring Article VI, Section 4 of the North Carolina Constitution and North Carolina General Statutes 163–28 unconstitutional and invalid, and unconstitutional and invalid as applied to him.

9. That many other persons who are members of plaintiff's race were deprived of the franchise through the application by the defendant of the so-called literacy test; that all of the persons so deprived of the franchise by the defendant were otherwise qualified for registration as voters; that the question herein presented is of common or general interest to many persons who are so numerous that it is impractical to bring them all before the Court; that plaintiff brings this action for himself and all such others herein mentioned as are similarly situated, as provided by North Carolina General Statutes 1-70.

Wherefore, plaintiff prays:

(1) That the Court declare Article VI, Section 4, of the North Carolina Constitution unconstitutional and invalid by reason of its conflict with the Due Process Clause, the Equal Protection Clause and the Privileges or Immunities Clause of the Fourteenth Amendment to the United States Constitution;

(2) That the Court declare Article VI, Section 4, of the North Carolina Constitution unconstitutional and invalid, by reason of its conflict with the Fifteenth Amendment and Seventeenth Amendment to the United States Constitution;

(3) That the Court declare North Carolina General Statutes 163-28 unconstitutional and invalid, by reason of its conflict with the Due Process Clause, the Equal Protection Clause and the Privileges or Immunities Clause of the Fourteenth Amendment to the United States Constitution;

(4) That the Court declare North Carolina General Statutes 163-28 unconstitutional and invalid, by reason of its conflict with the Fifteenth and Seventeenth Amendments to the United States Constitution;

(5) That the Court declare the so-called literacy test as provided by Article VI, Section 4, of the North Carolina Constitution and North Carolina General Statutes 163-28 unconstitutional and invalid, by reason of its conflict with the Due Process Clause of the Fourteenth Amendment, in that the said constitutional and statutory provisions provide no standards, guidance or restraint to guide administrative officers in administering said so-called literacy test and in that the administrative officers are clothed with unlimited discretionary and arbitrary power to deprive applicants of the privileges and rights of the franchise;

(6) That the Court declare that Article VI, Section 4, of the North Carolina Constitution and North Carolina General Statutes 163-28 are invalid and unconstitutional, by reason of their conflict with the Due Process Clause of the Fourteenth Amendment to the United States Constitution, for the reason that neither provision is sufficiently clear and sufficiently free from ambiguity in order to appraise an applicant, more particularly the plaintiff, of what is expected of him by way of qualification as a voter or to give him such notice of requirements as to enable him to prepare for the so-called literacy test;

(7) That the Court declare that Article VI, Section 4, of the North Carolina Constitution and North Carolina General Statutes 163-28 are invalid and unconstitutional, by reason of their conflict with the Due Process Clause of the Fourteenth Amendment to the United States Constitution, for the reason that neither provision provides an administrative or judicial review of an applicant's denial of registration as a voter and of plaintiff's denial or registration as a voter, in particular;

(8) That the Court declare that Article VI, Section 4, of the North Carolina Constitution and North Carolina General Statutes 163-28 are invalid and unconstitutional, by reason of their conflict with the Due Process Clause of the Fourteenth Amendment to the United States Constitution, for the reason that neither provision provides a literacy standard for registrars who are presumably charged by law with administration of the so-called literacy test;

(9) That the Court declare that Article VI, Section 4, of the North Carolina Constitution and North Carolina General Statutes 163-28 are invalid and unconstitutional, by reason of their conflict with the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution, for the reason that both provisions readily permit of the administration of registration laws with uneven hands and evil eyes in a manner interdicted by the United States Supreme Court;

(10) That the Court declare that Article VI, Section 4, of the North Carolina Constitution and North Carolina General Statutes 163-28 are invalid and unconstitutional, by reason of their conflict with the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution, for the reason that both provisions arbitrarily allow and require the registration of certain classes of persons without submission to a literacy test;

(11) That the Court declare North Carolina General Statutes 163-28, the so-called literacy test therein provided and the administration of the so-called literacy test by registrars of the voting registration to be invalid and unconstitutional, by virtue of repugnance to and conflict with Article I, Sections 10, 35 and 37, Article II, Section 1, and Article IV, Sections 1, 2, 8, 12 and 22 and other provisions of the North Carolina Constitution;

(12) That the Court declare that plaintiff and others similarly situated are entitled to be registered by the defendant without submission to the so-called literacy test purportedly provided in Article VI, Section 4, of the North Carolina Constitution and North Carolina General Statutes 163-28;

(13) That a copy of this Complaint and Summons be served upon the Attorney General of the State of North Carolina as provided in North Carolina General Statutes 1-260;

(14) That the costs of this action be taxed against the defendant; and

(15) That the plaintiff be given such other and further relief as to the Court may appear just and proper.

This 16th day of June 1956.

JAMES R. WALKER, Jr.,
Weldon, N. C.
TAYLOR & MITCHELL,
Raleigh, N. C., Attorneys for Plaintiff.

NORTH CAROLINA,
Wake County:

VERIFICATION

Alexander Faison, being first duly sworn, deposes and says that he is the Plaintiff in the Foregoing Compaint; that he has read and knows the contents thereof; that the things stated therein are true of his own knowledge, except those things alleged upon information and belief, and as to those things he believes it to be true.

ALEXANDER FAISON, *Affiant.*

Subscribed and sworn to before me this 16th day of June 1956.

[SEAL] LAURA D. HARRIS, *Notary Public.*

My commission expires February 4, 1958.

STATEMENT OF ATTORNEY FRED D. GRAY AS COUNSEL FOR THE MONTGOMERY IMPROVEMENT ASSOCIATION AS SUBMITTED TO THE SENATE SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS

My name is Fred D. Gray and I am a resident of Montgomery County, Ala., where I was born and have lived all my life except during the period when I was attending high school and law school. I am a member of the bar of the State of Alabama and also of Ohio. In addition to my profession as a lawyer, I am an ordained minister of the Church of Christ and serve as assistant minister of the Holt Street Church of Christ in Montgomery, Ala.

This statement is made in my capacity as counsel for the Montgomery Improvement Association, a nonprofit corporation, the general purposes of which are summarized in the following provisions of its certificate of incorporation:

"To use effective legal means to secure and maintain civil rights in any situation where an individual or a group have been deprived of their civil rights; and

"To do any and all other acts which will generally improve the city and county of Montgomery so that all of its citizens will receive all the rights and privileges secured to them by the Constitutions of the State of Alabama and the United States and to inform the citizens of their obligations, responsibilities, and duties which accompany these rights and privileges."

The Montgomery Improvement Association, now generally referred to as the MIA, came into being shortly after the arrest of Mrs. Rosa Parks for an alleged violation of the municipal and State ordinances and statutes requiring racial segregation of passengers on buses and the ensuing protest of the Negro citizens of Montgomery, with which this committee is no doubt familiar.

The MIA was used by the Negroes of Montgomery as an organization for providing directions to the protest movement and also for the purpose of educating themselves as to their rights and responsibilities as citizens.

As this committee no doubt also knows, the philosophy behind the protest movement has been one of nonviolence and observance of the laws as decided by

the highest court in the land. We believe that the MIA has served and is still serving a most important and useful role and that in its effective insistence upon nonviolence in a period of great tension and provocation it has been of tremendous service to all citizens of Montgomery, white and colored alike.

The MIA gives its wholehearted support to the bill upon which this committee is now holding its hearings and earnestly urges its passage.

We believe the following account of the incidents in the city of Montgomery, arising out of the protest movement above referred to, will illustrate the importance of the bill for the protection and rights of all citizens, regardless of their race, religion, or color.

On December 1, 1955, Mrs. Rosa Parks, a Negro seamstress, employed by a downtown department store, was making a routine trip from work on a city bus. The bus was filled with passengers, carrying 14 whites and 24 Negroes, seated in the accustomed areas on the 36-seat vehicle. When more white people got on at the next corner, the bus driver requested Mrs. Parks to give up her seat and stand so that more white passengers could be seated. She refused and was arrested, tried, and convicted for violating the city ordinance and State statute requiring segregation on city buses.

The arrest of Rosa Parks was resented by the Negro population in general. The resentment seemed not to have been because of this one incident, but because of many previous similar incidents, and this particular incident was the "straw that broke the camel's back."

When the Negroes of Montgomery heard of Mrs. Parks' arrest, thousands of circulars were distributed urging Negroes not to ride the city buses on the following Monday in protest to the arrest. On Monday night about 5,000 Negroes met at the Holt Street Baptist Church and adopted a resolution which asked the citizens of Montgomery not to ride the buses until a satisfactory seating condition had been worked out. The resolution stated that no method of intimidations would be used to prevent anyone from riding the buses. A car pool was organized to aid in getting the people to and from work. In the meantime, more than a dozen motorcycle policemen were assigned to trail the buses to be sure no one was prevented from riding the buses if they wanted to.

On December 8, a group of Negro leaders met for 4 hours with representatives of the bus company and the city to discuss the issue. Rev. M. L. King was selected as spokesman for the Negro delegation. Reverend King is the 27-year-old pastor of the historical Dexter Avenue Baptist Church of Montgomery. He holds a degree from Morehouse College, Crozer Theological Seminary, and Boston University, where he earned his doctorate.

The Rev. M. L. King, speaking for the Negroes, proposed that patrons be seated on a first-come, first-served basis with no section reserved for either race. Negroes would continue to sit from the rear to the front and the whites from the front to the rear. He suggested that there would be no reassignment of seats once the bus was loaded. There were two other proposals presented by the Negroes; more courteous service by the bus drivers to Negroes and the hiring of Negro bus drivers on predominantly Negro routes. The boycott conference failed to find a solution to the problem.

On December 25, 1955, the Montgomery Advertiser carried in a paid ad the Negroes' declaration of grievances against the bus company, a copy of which is attached, made a part of this report, and marked "Exhibit 1."

The new year (1956) came in with little hope to ease the transportation problem. By this time the ministers of the city had been branded as the leaders of the protest. It was being suggested in the community that the Montgomery Improvement Association should be checked to see if they were violating any laws of the State. On December 13, 1955, the Montgomery Advertiser carried an editorial entitled, "Action and Reaction, a Two Edge Sword," in which the editor declared that Negroes should reckon with the facts of life. First, the white man's economic artillery is far superior, and commanded by more experienced gunners; second, the white man holds all offices of government machinery. There would be white rule as far the eye can see. The Negroes were beginning to feel the sting of this whip. On January 9, a Montgomery attorney called attention to the press to the State law against boycott. He stated that title 14, section 54 of the Alabama Code provided that when two or more persons unlawfully enter into an understanding for the purpose of preventing the operating of lawful business, they shall be guilty of a misdemeanor.

On January 22, 1956, the city commissioners shocked the Negro population of Montgomery by stating that it had met with a group of prominent Negro ministers and had reached a solution to the problem. When it was learned that

these problems of transportation had been solved, the Negro leaders were greatly concerned. They knew nothing about the meeting. Later it was revealed that three Negro ministers had been called up to the chamber of commerce office to discuss "another issue about some type of insurance" and that they had been "hoodwinked into it." Negro ministers mobilized their forces to spread the news that the protest was not over. By the next morning the news had been circulated and almost everyone was aware of the commissioners' act. Even the newspaperboys who delivered the morning's paper rapped on the doors to warn the readers, "Don't believe that stuff about the boycott on the front page."

Such an attack on the city commissioners which virtually called them a lie could not be stomached. The commissioners instituted their "get-tough policy" by declaring that it was time to be frank and that the vast majority of the whites in Montgomery "do not care whether a Negro ever rides a bus again if it means that the fabric of our community is to be destroyed, and that the commission would stop pussy-footing around with the boycott." The statement was carried by WSFA–TV on January 24, 1956; Mr. Crawford Rice, the news announcer read the statement. According to the telecast, it read as follows:

"The city commissioners have announced a new get-tough policy in relation to the 7-week-old boycott of the city buses by a large part of the colored population. Mayor W. A. Gayle has called on all white Montgomerians to quit giving rides to their maids and other Negro employees who refuse to ride the buses. Gayle says, and these are his words, 'These cooks and maids in boycotting the buses are fighting to destroy our social fabric just as much as the Negro radicals who are leading them.' The mayor says 'the commissioners are through pussy-footing around with the leaders of the boycott.' Yes, and again we quote: 'The Negroes are laughing at the white people behind their backs, the white people who continue to give rides to their maids and cooks to and from work. These Negroes think it is very funny and the white people who are opposed to the boycott will act as chauffeurs for their maids.' 'The Negroes have made their own beds, says Mayor Gayle and the white people should allow them to sleep in it.'

"To the mayor's statement, Montgomery Police Commissioner Clyde Sellers adds this: 'I feel that the people of Montgomery and Alabama should know definitely the real reason behind this boycott or so-called boycott. I think the Reverend King, who is the leader of the Montgomery Improvement Association, has made one statement that everyone believes. He is for complete integration, in the schools and everywhere else, and this boycott is only a means to an end. I agree wholeheartedly with the mayor's statement with reference to the leaders of this boycott and the people who are involved in it. I think we have, as the mayor says, "pussy-footed" long enough with the leaders. We have made our position very clear as to our stand and they have gone back and misrepresented or failed to tell their people what we have actually presented to them. There are a number of ways in which we could, by enforcing law, force some of these people to stop riding these automobiles, or from the pick-up points to several places in the city. We are planning, beginning tomorrow, to call the taxis in for a periodic safety inspection, and call the other automobiles that are hauling these passengers in for a periodic safety inspection, check the drivers of these automobiles for chauffeur's license and to see whether or not they are qualified, and have a proper insurance to haul passengers. I think the people of Montgomery should get behind the city commissioners and see that we can in some way resolve this matter and end this boycott.'

"It has also been announced that all three members of the Montgomery city commissioners are members of the Central Alabama White Citizens Council. Commissioner Sellers publicly joined the prosegregation group at a recent meeting in Montgomery and both Mayor W. A. Gayle and Commissioner Frank Parks are also members."

By now it seemed, to the Negroes, that this action of the city commission was a part of an organized conspiracy to harass and intimidate them with the police department leading the attack. In this atmosphere, Rev. M. L. King was arrested and put in jail for speeding. Negroes gathered at the scene of the arrest; they were upset over the uncustomary procedure of frisking a person being arrested for speeding.

As a part of this get-tough policy there was a crack down on the car pool. Negro drivers of private automobiles and Negro taxi drivers were given an excessive amount of traffic tickets; and in most cases, instead of being given a ticket, they were taken to jail, charged with minor traffic violations and required to make bond before they were released. During the protest, approximately $2,500 was paid for fines by drivers in the car pool.

In January of 1956, a Negro group applied for a franchise to operate a jitney bus service. This was denied by the city; they (the city commission) stated in reply to the application that "adequate transportation was being furnished by the local bus company."

On January 30, 1956, while Reverend King was attending a mass meeting at the First Baptist Church, his home was bombed. A picture of a portion of the damage done is attached hereto, marked "exhibit 2" and made a part hereof. To date, we have no report that any arrests have been made in connection with this bombing.

On February 1, 1956, five Montgomery Negro women filed suit in the United States district court against the bus company and the city commissioners asking the court to declare Alabama and Montgomery's transportation laws requiring segregation unconstitutional.

This bill of complaint charged that Negroes have been deprived of their rights, privileges, and immunities under the 14th amendment in seeking "to compel the plaintiffs and other Negro citizens to use the bus facilities" under threats and harrassment. It alleged that the defendants had entered into a conspiracy to interfere with the civil and constitutional rights of the Negro citizens.

Shortly after Attorney Fred D. Gray filed the case in Federal court, he was reclassified by his draft board and put in classification 1–A (making him eligible for immediate induction into the Armed Forces). Since 1948 he had been exempt from military service because he was a minister.

In February 1956, Attorney Gray was indicted by a Montgomery County grand jury for allegedly representing a lady without her consent. He was arrested on February 18, 1956. The story was carried by the Alabama Journal on February 18, 1956, a copy of which is attached, marked "Exhibit 3" and made a part hereof. The case was subsequently nol prossed, as indicated by the Alabama Journal, March 2, 1956, a copy of which is attached, marked "Exhibit 4" and made a part hereof. If Attorney Gray had been convicted, he would have been automatically disbarred.

The Montgomery County grand jury indicted all persons it could connect with the protest, and on February 22, 1956, deputies began to make arrests. They were charged with unlawfully boycotting the bus company. A total of 93 persons were arrested; 24 were ministers. For almost 2 days the courthouse was crowded with Negroes going in and out. The indicted were given a number, fingerprinted and photographed. The whole procedure seemed to have everyone confused because surely there had been nothing like it in Montgomery's whole history. There seemed to have been some supernatural force that gave them strength. Many Negroes after hearing that their names were on the list went straight to the courthouse. Others went to inquire if they were on the list. One Negro leader, after being told he was not listed, became angry and insisted on knowing why he was not. It was indeed a day of honor to be arrested.

The trial of 93 Negroes, charged with illegally boycotting the Montgomery City Lines, began on March 19, 1956. About 500 Negroes waited in the halls and outside the small courthouse which was to be the scene of the trial. The Reverend M. L. King, case No. 7399, pastor of the Dexter Avenue Baptist Church and recognized spokesman of the boycott, was the first to be tried.

Reverend King was convicted on March 22, 1956, on a charge of violating the State's antiboycott law and was fined $500 and costs in court by Judge Eugene Carter, the equivalent of 386 days at hard labor in the county of Montgomery. Carter ordered a continuance in 89 other cases of Negroes charged with the same violation until a final appeal action was completed in the King case.

On May 11, 1956, a three-judge Federal court panel aired the antisegregation suit filed by Attorney Fred Gray. The three-judge Federal court panel studied and deliberated on the case for a few weeks and on June 4, 1956, declared the city's bus segregation laws of Alabama unconstitutional.

On June 1, 1956, the Honorable Walter B. Jones, judge, granted a temporary injunction enjoining the NAACP from operating in the State of Alabama at the request of Attorney General John Patterson. The petition filed by Attorney General Patterson alleged, among other things, that the NAACP was responsible for the Montgomery bus protest. The NAACP is still barred from the State and is under a $100,000 fine.

Rev. Robert S. Graetz's home was bombed on August 25, 1956, while he and his family were away on vacation. Reverend Gratez is the white pastor of an all-Negro church in Montgomery, Ala., and he has been one of the leaders in the protest movement. A picture of his damaged home is attached, marked

"Exhibit 5" and made a part hereof. We have no report stating that any arrest has been made for this bombing.

On August 4, 1956, policemen paved the way for a truck and station wagon which drove down Dexter Avenue to the square in downtown Montgomery, stopping traffic so that a group of white men could hang in effigy the NAACP and prointegrationists, according to the Alabama Journal of August 4, 1956—a copy of which is attached, marked "Exhibit 6" and made a part hereof. The story was also carried by the Montgomery Advertiser on August 5, 1956—a copy of which is attached, marked "Exhibit 7" and made a part hereof.

Effigies of Negroes were hanged from flagpoles of two white high schools in Montgomery, Ala., on September 6, 1956, according to the Alabama Journal of September 6, 1956—a copy of which is attached, marked "Exhibit 8" and made a part hereof.

On November 13, 1956, the Honorable Eugene Carter issued an injunction at the request of the city of Montgomery enjoining the MIA, about 13 Negro churches, and many individuals from operating the car pool. The story was carried by the Alabama Journal, November 14, 1956. A copy is attached, marked "Exhibit 9," and made a part hereof.

The city buses in Montgomery, Ala., became integrated by court orders on December 20, 1956, when the mandate from the United States Supreme Court reached local officials. Immediately after it arrived, the Montgomery Improvement Association informed the city commissioners that Negroes would immediately begin riding the buses on a nonsegregated basis and requested additional police protection. At that time no additional police protection was granted. Within a few days after the buses began operating on a nonsegregated basis several buses were shot into and one Negro woman, Mrs. Rosa Jordan, was wounded.

On January 10, 1957, violence reached its peak in Montgomery. Early in the morning of that day, 4 Negro churches and 2 homes were bombed. The churches were: Bell Street Baptist Church, exhibit 10, Hutchinson Street Baptist Church, exhibits 11 and 12, First Baptist Church, exhibit 13, Mount Olive Baptist Church, exhibits 14 and 15; and the homes were those of Rev. Ralph Abernethy, exhibit 16, and Rev. Robert Graetz, exhibit 17. This was the second time Reverend Gretz' home was bombed.

Another bomb was tossed in Reverend Graetz' yard but did not go off on that same morning contained about eight sticks of dynamite. A picture of said bomb is attached and marked "Exhibit 18." According to newspaper reports, this bomb was subsequently thrown into the river and it was believed to have still been alive when discovered.

The last bombing occurred on January 27, 1957, at a Peoples Cab & Service Station in the same block where Reverend King lives. A picture of the damage done is attached and marked "Exhibit 19." On the same day, an unexploded bomb was found on the porch of Rev. M. L. King. A picture of which is attached and marked "Exhibit 20."

In conclusion we would like particularly to emphasize the importance of those provisions in the bill designed to protect the right to vote. Section 1 of article 14 of our Constitution provides that all persons born or naturalized in the United States are citizens of the United States as well as of the States wherein they reside. But we respectfully submit that citizenship deprived of the right to participate in the operations of Government, whether State or Federal, is not true citizenship. Certain rights of citizenship, it is true, are guaranteed by our Federal Constitution but the enforcement of these rights depends in the final analysis upon fair and objective courts and law-enforcement officials. Without in any way intending to condemn or disparage the courts of the law-enforcement officials of my State and community, they are, after all, human beings who are subject to the pressures and for the most part, share in the traditional ways and beliefs of the dominant element in their community.

As an illustration, we attach as exhibit 21, a recent newspaper article written by the presiding judge of the circuit court of Montgomery County, Ala. The judges and the chief law-enforcement officials are, for the most part, elected officials. As such, it is inevitable that they are likely to be responsive to the sentiments of those who put them into office and keep them there, and to overlook the sentiment and rights of those who have little or no voice in their election. We firmly believe that if the Negroes of Montgomery have the right to vote commensurate with their numbers and qualifications, the situation which has been described above would not have occurred.

Voting in Alabama, and particularly in Montgomery, presents no problem provided one is able to get registered. However, registration presents almost

unsurmountable obstacles. The county board of registrars determines who is qualified to vote. There are three members of this board. They are appointed by the Governor, auditor and commissioner of agriculture. The board has the power to determine the qualification of the applicant for registration and by law are made judicial officers. Negroes and whites (applicants) must fill out a questionnaire as one means of determining fitness of the applicants for the ballot. A copy of the questionnaire is attached and marked "Exhibit 22." A detailed study of the voting situation in Alabama as it relates to Negroes was made by Prof. J. E. Pierce. A copy of this study is attached, marked "Exhibit 23." We respectfully urge this committee to carefully consider this report.

Although this report was made in 1954, the voting situation as it relates to Negroes has not substantially changed. There are still no Negro voters in Lowndes and Wilcox Counties, even though the population of the Negroes over 21 years is more than twice the white population.

In Macon County, the county seat of which is Tuskegee, the home of the famed Negro institute, the board of registrars has not functioned there for over a year. This means that not a single person, white or colored, has been able to get registered for over a year. In this county Negroes outnumber whites by 4 to 1.

In Bullock County there are twice as many Negroes over 21 years of age than white. However, there are only six Negro voters. No Negro has been registered in that county since 1952.

From our records, experience and investigation, we have reached the following conclusions, showing how difficult it is for Negroes to become voters:

1. There is a quota system in use. At times most persons appearing before the board qualify. Later, it is almost impossible to get anyone registered. Many of the persons applying are highly trained and have had experience in filling out blanks which are more difficult than the ones required to be filled by the board of registrars.

2. Some Negroes are not allowed an opportunity to take the examination but once during a season. If one has been before the board and later inquires of his registration certificate, he is told that he did not pass the test. If he asks for an application form to take it over, he is told to return some 3 months or so later. Sometimes he will have to wait 6 months before he is permitted to make a second try.

3. Many person have filled out applications as many as five times before being certified. Many have testified that they filled out the form each time the same way they did at the time they received their certificate.

4. The Negro will always be told that his certificate will be mailed. The whites will get theirs at the time of registration unless a Negro is present and then the white applicant will be told that his certificate will be mailed.

5. Many people have testified to the fact that members of the board have helped white applicants while no Negro has received this service. There have been complaints that the Negro uses the same answer. For instance the Negroes will invariably put as a duty of a citizen "to defend your country, to obey the laws." The board members complain that there should be some originality in these answers.

6. In some counties the members of the board serving Negroes are not congenial. They greet applicants in a way that often discourage them, causing many of them to walk out without taking the test.

7. The person failing to receive his certificate is invariably told that he did not pass, but this is done only upon inquiry. However, nothing is revealed or made known as to the nature or on what the applicant failed to answer correctly. It has been reliably reported that some applicants have filled out the questionnaire correctly but that the board did not mail the certificate.

We respectfully submit, based upon the foregoing facts, that this type of legislation is drastically needed for the protection of many American citizens who are now being denied basic constitutional rights.

If this bill is approved by this committee and ultimately passed by Congress, it will mean the second emancipation for the American Negro.

We urge its passage.

FRED D. GRAY,
Counsel for the Montgomery Improvement Association.

STATE OF ALABAMA,
Montgomery County:

Before me Bernice Hill, notary public, in the said county, personally ap-

peared Fred D. Gray, to me known, who being by me first duly sworn on oath, deposes and says:

That he is counsel for the Montgomery Improvement Association and is familiar with the facts contained in the foregoing document; that said facts are true and correct to the best of his knowledge, information and belief.

FRED D. GRAY.

Sworn to and subscribed before me this 6th day of March 1957.

[SEAL] BERNICE HILL, *Notary Public.*

EXHIBIT No. 1

[Advertiser-Journal, December 25, 1955]

To the Montgomery public:

We, the Negro citizens of Montgomery, feel that the public has a right to know our complaints and grievances which have resulted in the protest against the Montgomery City Lines and our refusal to ride city buses. We, therefore, set forth here some of the many bitter experiences of our people, who have at various times been pushed around, embarrassed, threatened, intimidated, and abused in a manner that has caused the meekest to rise in resentment.

COMPLAINTS

1. Courtesy

The use of abusive language, name calling, and threats have been the common practices among many of the bus operators. We are ordered to move from seats to standing space under the threat of arrest or other serious consequences. No regard for sex or age is considered in exercising this authority by the bus operator.

2. Seating

The bus operators have not been fair in this respect. Negroes, old, young, men and women, mothers with babies in their arms, sick, afflicted, pregnant women, must relinquish their seats, even to schoolchildren, if the bus is crowded. On lines serving predominantly Negro sections, the 10 front seats must remain vacant, even though no white passenger boards the bus. At all times the Negro is asked to give up his seat, though there is not standing room in the back. One white person, desiring a seat, will cause nine Negroes to relinquish their seats for the accommodation of this one person.

3. Arrests

Numerous arrests have been made even though the person arrested is observing the policy as given us. This year the following persons have been arrested and convicted, although they were seated according to the policy given us by the bus company. They are Claudette Colvin, Alberta "Coote" Smith, and Mrs. Rosa Parks. Among others arrested at other times are Mrs. Viola White, Miss Mary Wingfield, two children from New Jersey, and a Mr. Brooks, who was killed by the policeman.

4. Two fares

Many house servants are required to pay an additional fare if the bus is late getting to town, causing them to miss a bus going to Cloverdale or other distant points. Some of these have complained that on returning from work similar incidents have occurred, necessitating the payment of double fares.

5. Making change

We understand that correct change should be given the operator, but there are times that such is not possible. Several bus operators have refused to make change for passengers and threatened to put them off for not having the exact amount. On one occasion a fellow passenger paid the fare of one such passenger to prevent her from being put off.

6. Passing up passengers

In many instances the bus operators have passed up passengers standing at the stop to board the bus. They have also collected fares at the front door and, after commanding Negro passengers to enter from the back door, they have driven off, leaving them standing.

7. Physical torture

One Negro mother, with two small children in her arms, put them on the front seat while she opened her purse for her fare. The driver ordered her to take the children from the seat, and without giving her the chance to place the children elsewhere, lunged the vehicle forward, causing the small children to be thrown into the aisle of the bus.

8. Acknowledgment

Not all operators are guilty of these accusations. There are some who are most cordial and tolerant. They will go to the extent of their authority to see that justice and fair play prevail. To those we are grateful and sympathetic.

9. Adjudication

Every effort has been used to get the bus company to remove the causes of these complaints. Time and time again complaints have been registered with the bus company, the city commission, and the manager of the bus company. Committees of both sexes have conferred, but to no avail. Protests have been filed with the mayor, but no improvement has been made.

In March we held a conference with the manager of the Montgomery City Lines and made a very modest request (1) that the bus company attorney meet with our attorneys and give an interpretation to laws regulating passengers and (2) that the policy of the bus on seating be published so that all bus riders would be well informed on the policy of the bus. To this day this has not been done.

The manager read to us the city code and informed us that this is in the hands of every bus driver. At this meeting, the arresting officers of the Claudette Colvin case were there, along with the police commissioner. The bus operator, who caused the arrest of Claudette Colvin, was requested to be present, but did not come.

A committee met with the mayor and associate commissioners when the bus company requested a raise in fare. No protest was made against the raise, but only against seating and courteous treatment of passengers. Nothing came of this and Negroes were treated worse after the increase in bus fare than before.

The great decision

The bus protest is not merely in protest of the arrest of Mrs. Rosa Parks, but is the culmination of a series of unpleasant incidents over a period of years. It is an upsurging of a ground swell which has been going on for a long time. Our cup of tolerance has run over. Thousands of our people, who have had unhappy experiences, prefer to walk rather than endure more. No better evidence can be given than the fact that a large percent of the Negro bus riders are now walking or getting a ride whenever and wherever they can.

Our proposal

The duly elected representatives of the people have the approval of the bus riders to present three proposals:

1. That assurance of more courtesy be extended the bus riders. That the bus operators refrain from name calling, abusive language, and threats.

2. That the seating of passengers will be on a "first-come, first-served" basis. This means that the Negro passengers will begin seating from the rear of the

bus toward the front and white passengers from the front toward the rear until all seats are taken. Once seated, no passenger will be compelled to relinquish his seat to a member of another race when there is no available seat. When seats become vacant in the rear, Negro passengers will voluntarily move to these vacant seats and by the same token white passengers will move to vacant seats in the front of the bus. This will eliminate the problem of passengers being compelled to stand when there are unoccupied seats. At no time, on the basis of this proposal, will both races occupy the same seat. We are convinced by the opinions of competent legal authorities that this proposal does not necessitate a change in the city or State laws. This proposal is not new in Alabama, for it has worked for a number of years in Mobile and many other southern cities.

3. That Negro bus drivers be employed on the buslines serving predominately Negro areas. This is a fair request and we believe that men of good will will readily accept it and admit that it is fair.

Nature of movement

1. *Nonviolence*—At no time have the participants of this movement advocated or anticipated violence. We stand willing and ready to report and give any assistance in exposing persons who resort to violence. This is a movement of passive resistance, depending on moral and spiritual forces. We, the oppressed, have no hate in our hearts for the oppressors, but we are, nevertheless, determined to resist until the cause of justice triumphs.

2. *Coercion*—There has not been any coercion on the part of any leader to force any one to stay off the buses. The rising tide of resentment has come to fruition. This resentment has resulted in a vast majority of the people staying off the buses willingly and voluntarily.

3. *Arbitration*—We are willing to arbitrate. We feel, that this can be done with men and women of good will. However, we find it rather difficult to arbitrate in good faith with those whose public pronouncements are anti-Negro and whose only desire seems to be that of maintaining the status quo. We call upon men of good will, who will be willing to treat this issue in the spirit of Him whose birth we celebrate at this season, to meet with us. We stand for Christian teachings and the concepts of democracy for which men and women of all races have fought and died.

The METHODIST MINISTERIAL ALLIANCE,
Rev. J. W. HAYES, *President.*

The BAPTIST MINISTERS' CONFERENCE,
Rev. H. H. HUBBARD, *President,*
Rev. R. D. ABERNATHY, *Secretary.*

The INTERDENOMINATIONAL MINISTERIAL ALLIANCE,
Rev. L. ROY BENNETT, *President,*
Rev. J. C. PARKER, *Secretary.*

The MONTGOMERY IMPROVEMENT ASSOCIATION,
Dr. M. L. KINGS, Jr., *President,*
Rev. U. J. FIELDS, *Secretary.*

The Negro Ministers of Montgomery and Their Congregations.

EXHIBIT No. 2

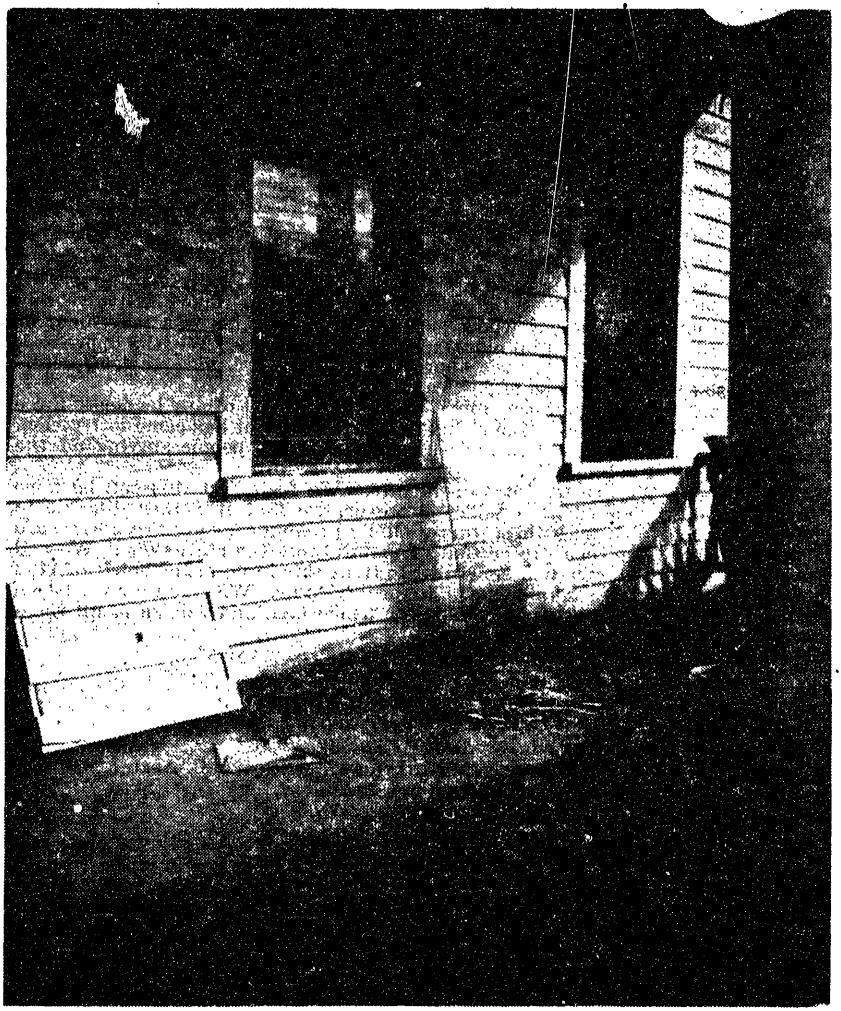


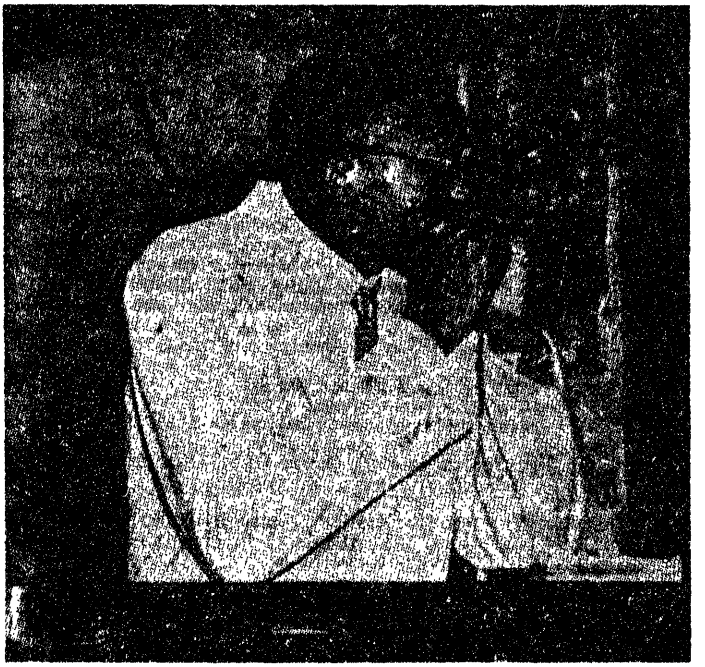
EXHIBIT No. 3

[From the Alabama Journal, February 18, 1956]

NEGRO ATTORNEY ARRESTED FOR UNLAWFUL PRACTICE—FINE OF $500 FACED BY GRAY ON INDICTMENT—FEDERAL COURT SUIT TO END SEGREGATION ON BUSES INVOLVED

(By Bunny Honicker)

Negro Attorney Fred David Gray, the top legal voice in the Montgomery bus-boycott cases, was arrested today on a grand-jury indictment charging him with "unlawfully appearing as an attorney" for a person without being employed by that person.



BUS BOYCOTT LAWYER AWAITS BOND

Negro Attorney Fred Davis Gray stares moodily out the window in the front office of the county jail today as he awaits someone to come bail him out on a charge of representing a person without having been employed by that person. He later was released under $300 bond

The 25-year-old lawyer was charged specifically with representing Jeaneatta Reese, of 1454 South Holt Street, an elderly Negro housemaid, in a suit filed in Federal court to end segregated travel, without being employed by the woman.

Gray was arrested by Montgomery County Sheriff's Deputies Greer Lifford and James Yarbrough and booked at county jail at 10:55 a. m. He was then "mugged" and fingerprinted by Deputy Allen A. Poindexter.

Asked for comment, Gray shook his head and said he had none.

FACES $500 CHARGE

The grand jury, which released a partial report yesterday, charged Gray with violating title 46, section 55, Alabama State Code of 1940, a misdemeanor.

This section reads: "Attorney Appearing Without Authority.—Any attorney appearing for a person without being employed must, on conviction, be fined not less than $500, and shall be incompetent in any court of this State."

The 1953 supplement of section 55 reads: "Word 'appearing' is not limited to representation of a defendant, but includes also a plaintiff."

Gray was held in custody for approximately half an hour and then released under $300 bond.

Witnesses, other than Jeaneatta Reese, listed on the indictment were Q. P. Colvin, 622 East Dixie Drive, and O. D. Street, clerk of the United State district court.

Earlier, Gray and Negro Attorney Charles Langford filed a suit in United States district court seeking to abolish segregated travel on public conveniences in Alabama.

Plaintiffs were listed as Jeaneatta Reese, Aurelia S. Browder, Susie McDonald, and Claudette Colvin by her next friend, Q. P. Colvin.

The grand jury charged that Gray did "unlawfully and knowingly appear as attorney for Jeaneatta Reese * * * all without authority from Jeaneatta Reese and without being employed to do so" by the woman.

ASKS TO WITHDRAW

The day after the suit was filed, the woman appeared in the office of Mayor W. A. Gayle and in the presence of this reporter and the mayor made a statement to the effect that she didn't realize what she was signing when she signed her name to the suit. She then said she wanted to withdraw her name.

Gray denied the woman's statement and said that "she knew perfectly well what she was signing."

Gray, who received his law degree from Western Reserve University in Cleveland, Ohio, and who is a member of the Alabama Bar Association, had been classified as 4–D by his draft board from 1948 until this month upon his claim that he was a "practicing minister." This month, his board classified him 1–A.

EXHIBIT No. 4

[From the Alabama Journal, March 2, 1956]

GRAY CASE NOL PROSSED IN CIRCUIT COURT HERE—SOLICITOR ACTS TO REFER COUNT TO UNITED STATES OFFICERS

A charge of unlawful practice against Negro Attorney Fred D. Gray, legal spokesman for bus boycotters, was dismissed in circuit court today when the State admitted it does not have jurisdiction.

The action nol prossing the case came at the outset of Gray's scheduled trial. Circuit Solicitor William T. Thetford said the State could not prosecute the young attorney because the offense for which he was indicted took place in a Federal building.

REFERRED TO DAVIS

Thetford said the issue would be brought to the attention of United States District Attorney Hartwell Davis for Federal prosecution if he sees fit. Davis said he has not been officially notified of the action and could not say if he would investigate.

Gray said he had no prior knowledge the charges against him would be thrown out of circuit court. But he said he had come to the courtroom prepared to file motions challenging the State's jurisdiction.

"I'M PLEASED"

"Naturally I'm pleased," the young attorney said, "but I haven't really been worrying about the outcome."

He was accompanied to the courtroom this morning by Arthur D. Shores, the Birmingham Negro attorney who led the fight to get Negro coed Autherine J. Lucy admitted to the University of Alabama.

Gray said he had received several anonymous telephone calls last night taunting him about "what was going to happen" in court this morning.

Gray, 25, was indicted for unlawful practice growing out of an antisegregation suit he filed in United States district court in the name of five Negro women. He was indicted after one of the women said later she had not given permission for the action.

Thetford explained this morning that the State does not have jurisdiction to prosecute criminal offenses occuring on some Federal property. Gray filed the antisegregation suit in Federal court on the third floor of the United States post office.

The circuit solicitor explained the case this way:

When the State passed a law in 1880 authorizing the Federal Government to acquire property in Alabama, the State reserved to itself the jurisdiction in criminal cases occurring on the property.

But that act was changed in 1923, giving the Federal Government jurisdiction.

Although jurisdiction was given back to the State again in 1940, Thetford explained, the post office building here was acquired in 1931 and the Federal Government retains the right to prosecution. Even in cases such as murder.

Gray was accused of filing the antisegregation suit in Federal court without the permission of Jeanetta Reese. Conviction on the unlawful practice charge would have brough a fine of not less than $500 and disbarment.

He was indicted 2 weeks ago by the Montgomery County grand jury which later charged some 100 other Negro leaders here with violating Alabama's antiboycott law by their prolonged protest which has been in effect since December 5, in protest against racially segregated buses.

Shores and Gray were among the five Negro attorneys who yesterday challenged constitutionality of the 1921 law under which the boycott indictments were returned.

The demurrers filed by the team of attorneys in circuit court said the State law violates the first and 14th amendment to the United States Constitution and is also illegal under the Alabama constitution.

Specifically cited as being denied were the freedom of worship, freedom of speech, and the guaranty against deprivation of liberty without due process of law.

The action contends the indictments against the boycotters are "so vague and indefinite" that the defendants don't know "what they are called on to defend."

The Negroes charged with leading the protest movement, including 24 ministers, are scheduled for trial beginning March 19.

Gray, a bachelor who lives with his mother, had been exempt from the military draft under a IV–D classification as a "practicing minister." But he was reclassified and put in I–A shortly after filing the antisegregation suit in Federal court.

State Selective Service Director James W. Jones said he ordered Gray's draft status reviewed, explaining that the young attorney had lost his deferment when his church acquired a full-time minister.

The Federal court suit filed by Gray attacks constitutionality of State and city laws requiring segregated facilities for whites and Negroes on buses.

Jeanetta Reese, 1 of the 5 Negro women listed by Gray as a party to the action, later told Mayor Gayle in the presence of a newspaperman that she did not give her consent. Gray denied that at the time.

The demurrers to the boycott cases filed yesterday by Gray and Shores along with 3 other Negro attorneys named specifically only 4 defendants—Rev. Martin Luther King, Jr., Rev. E. M. French, Rev. Roy Bennett, and E. D. Nixon, former State president of the National Association for the Advancement of Colored People.

EXHIBIT No. 5

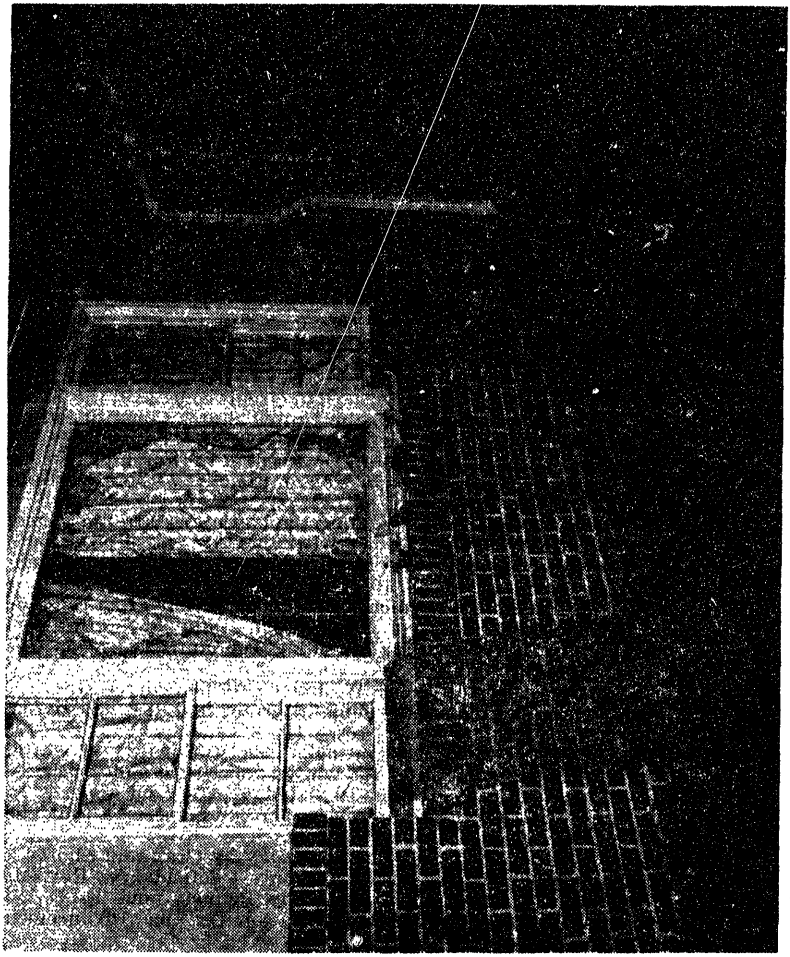


EXHIBIT No 6

[From the Alabama Journal, August 4, 1956]

AT COURT SQUARE:

PROTEST ON INTEGRATION BRINGS EFFIGY HANGINGS

(By Joel Vance)

Several hundred surprised Montgomerians this morning saw an unidentified group of men take a slap at the NAACP, the Supreme Court, and prointegrationists.

Shoppers and passersby around the Court Square fountain saw a truck pull up about 9:40 a. m. with a scaffold. Right behind it was a blue station wagon bearing the insignia of the "Alabama Labor News."

While a trumpeter played Reveille, a group of men from the truck set up the gallows. Then a second group from the station wagon dragged out two dummies, one the representation of a Negro, bearing the sign "NAACP," the other the representation of a white man with a sign saying "I Talked Integration."

The two dummies were summarily hung while someone sounded a Confederate yell and the trumpeter played taps.

TORN DOWN

Shortly after the demonstration, about 11 a. m., police tore down the scaffolding on order of Mayor W. A. Gayle.

A sign on the front of the gallows took a further swipe at the unions, saying "Built by Union Labor." According to one organizer of the rally, "This is to show the union leftists who preach integration that we mean business."

Two dead crows adorned the top of the gallows and signs saying "Jim Crow" were printed on the wooden uprights.

"The program," said one of its organizers, "is in general expression of contempt for the Supreme Court. Reveille symbolizes the awakening of the South to its problem and Taps represents the death blow we're going to deal the ruling."

CONFEDERATE FLAGS

Two small Confederate flags fluttered in the breeze above the dead crows and a second Confederate yell sounded as the men in the station wagon drove off.

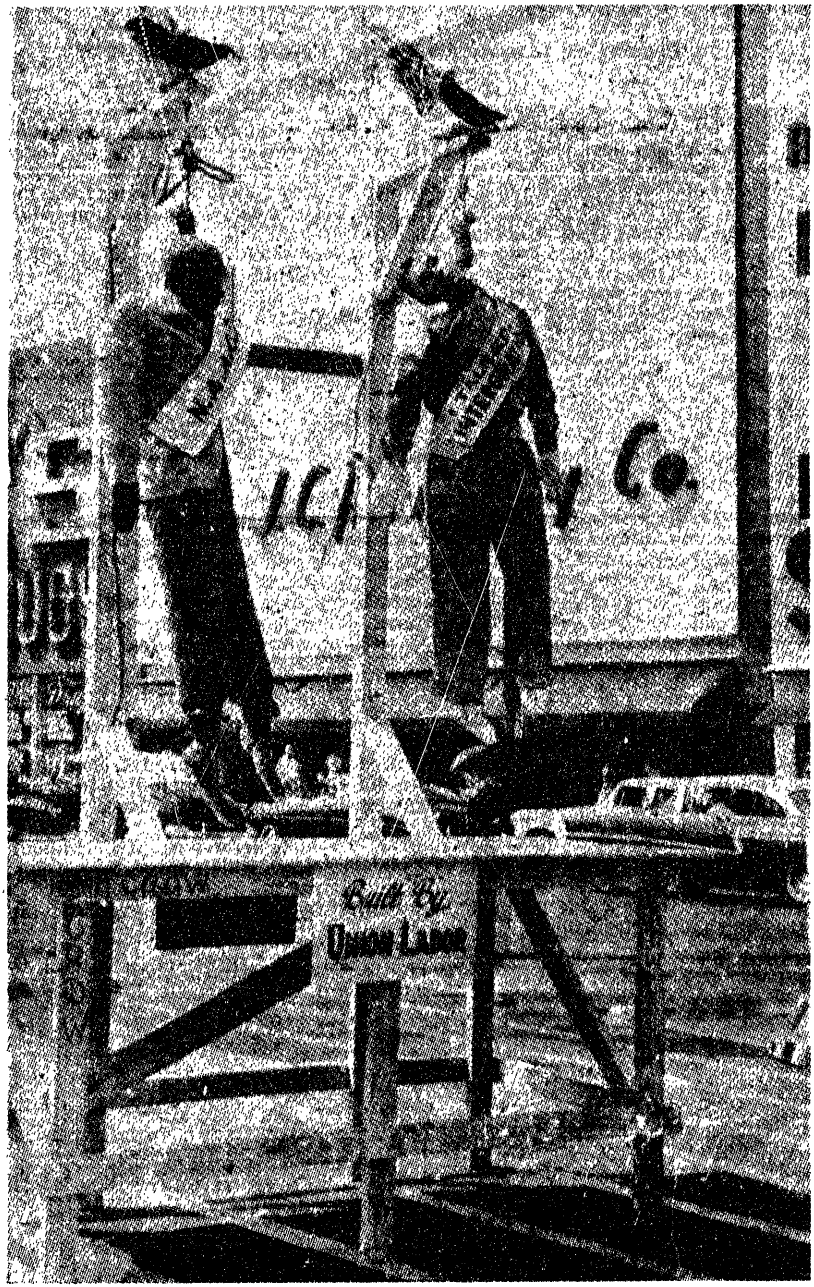
The crowd reaction was generally puzzled. Comments ranged from that of one man who said, "They ought to bring out dummies of the judges and hang them, too," to that of a little girl who tugged at her mother and queried, "Mommy, is that all? Is that all?"

"I don't know, honey," the mother replied. "I don't know what it's all about."

Police paved the way for the truck and station wagon which drove down Dexter Avenue to the square, stopping traffic. There was no overt reaction from the crowd. They waited quietly until the 10-minute ceremoney was over and then moved on about their business.

EXHIBIT No. 7

[From the Montgomery Advertiser, August 5, 1956]



SEGREGATION SYMBOL SCUTTLED

This gallows was erected on Court Square yesterday to hang the NAACP and prointegrationists in effigy. One of group of 12 men who erected the gallows said the purpose of the macabre ceremony was to show "how serious we feel about the segregation issue." The prank was reportedly the brainchild of the Committee on the Preservation of Segregation, a Montgomery group.

WRECKED BY POLICE—INTEGRATION OPPONENTS HANG TWO EFFIGIES IN COURT SQUARE

A small group of men attempted to stir the racial cauldron with a mock hanging ceremony at Court Square yesterday, but their efforts attracted little attention and police tore down the macabre gallows scene about an hour after it was erected.

A normal Saturday throng of shoppers and passersby expressed more curiosity than approval at the scaffolding from which hung two effigies, one painted black and adorned with the sign, "NAACP," and the other (representing a white man) wearing a sign "I talked integration."

Among the onlookers was a small girl, apparently entertained by a rendering of Reveille on a trumpet by one of the demonstrators. "Mommy," she inquired, "is that all?" "I don't know honey," her mother replied. "I don't know what it's all about," she added.

A police officer commented "there was no unusual crowd at Court Square." "There were plenty of people there," Lt. G. H. Owens said, "but there always is on Saturdays."

But the demonstrators—a group of about 12 men—apparently were serious about the ceremony. One of the group, when asked if it was done as a joke or prank, replied, "Hell, no. We did this to show how serious we feel about the segregation issue." He said the demonstrators were "union members and businessmen."

The men—most of whom were unidentified—took a mock gallows from a truck at 9:40 a. m. yesterday and placed it at the foot of the Court Square fountain while another man played Reveille on a trumpet. Two dummies were then taken from a station wagon bearing the insignia "Alabama Labor News," and while the dummies were hung, one of the group sounded the rebel yell and the trumpeter played Taps.

Two of the participants were identified as Jack D. Brock, copublisher of the Alabama Labor News, and Eugene S. Hall, a director of the Montgomery White Citizens Council.

Brock said the ceremony had been planned for about a month. He said he received a telephone call from the Committee on the Preservation of Segregation (COPS) requesting his participation in the mock ceremony. "As we of the Alabama Labor News are among the leaders in the fight to preserve segregation," Brock said, "I offered my services to COPS."

Brock said COPS is an organization of about 600 white persons pledged to preserve segregation in Montgomery.

The last issue of the Alabama Labor News, published by Brock and Homer Welch, carried on its first page an announcement for all Montgomerians to be present at Court Square at 9:30 a. m. on Saturday (yesterday). The publication, however, did not say what would take place at that time.

Hall, who like Brock is a printer employed by the Advertiser-Journal, explained that Reveille symbolized "the awakening of the South to its problem" and "Taps" represented "the death blow we're going to deal the Supreme Court's integration ruling."

A sign beneath the mock scaffold bore the words, "Built by Union Labor." An informed source who refused to be named said this was in defiance of "northern labor leaders who preach integration."

The source said the dummies and the materials for the scaffold were paid for by "local union members and business people." He said the mock hanging was rehearsed several times before it was carried out and added the scaffold was built "in a shed belonging to one of the unions involved."

The source said the demonstration was not authorized by the city. At about 11 a. m. police tore down the scaffolding on the order of Mayor W. A. Gayle.

Hall, a local WCC leader, said the Citizens Council did not sponsor the program. "It would be correct to say members of the council participated, but the program was sponsored by the Committee on the Preservation of Segregation."

Most of the crowd comments appeared to have been favorable toward the effigies, according to Hall. He said he heard one man say, "This should let everybody know how we feel about integration." He said another man, identified as a politician, said, "I don't know if this [the hanging] is quite the right thing to do." Hall said a third man turned to the unidentified politician and retorted, "That's why you were defeated in the last election." Hall said the politician remarked he was in favor of segregation despite his feelings toward the effigy hanging.

While the WCC apparently remained aloof from the display, Senator Sam Englehardt, executive secretary of the Alabama Association of Citizens Councils, with headquarters here, did not appear perturbed.

"I didn't see it," he told the Advertiser-Journal last night, "but it won't hurt anything. I think it shows the people of Montgomery mean business. They intend to preserve segregation. Any way you can poke the NAACP is all right with me."

EXHIBIT No. 8

[From the Alabama Journal, September 6, 1956]

EFFIGIES HUNG AT THREE SCHOOLS

Effigies of Negroes were hung from flagpoles of two high schools here last night—at Sidney Lanier and Robert E. Lee—on the eve of public school opening today. At Harrison Elementary School, where Negro students tried unsuccessfully to enroll 2 years ago, figures of a Negro and a National Guard man were hung (above). The sign on the guardsman refers to a comment by Gov. James E. Folsom that he approved use of the guard to keep order in Tennessee.

EFFIGIES ARE HAULED DOWN—SCHOOL REGISTRATION OPENS QUIETLY HERE

Montgomery's public-school students began the new year without reported incident this morning after a brief flareup last night of anti-integration sentiment.

Effigies of 3 Negroes and a National Guard man, hanged at 3 city schools last night, were removed by the time students appeared for classes.

The principal of William Harrison Elementary School reported that the two manikins which were hung at his school were removed around 7 a. m. today. He did not know how they were taken down or who did it.

SIGNS ON FIGURES

One of the figures, that of a Negro, bore the sign, "Forced Integration." The other, that of a National Guardsman, wore a helmet liner on which was painted "Ala. N. G." A wooden training rifle was strapped to his back. The figure also bore a sign saying, "This is not Tenn., Big Jim."

The reference was to a statement made 2 days ago by Gov. James E. Folsom that he approved use of the Natonal Guard in Tennessee to maintain order.

Harrison was the scene of an attempt 2 years ago to enroll Negro students.

At Sidney Lanier High School, Principal Lee W. Douglas reported that he had ordered the single effigy of a Negro man hanging from atop the school flagpole removed at about 5:30 this morning.

This figure bore a placard across its chest saying, "I enrolled at Lanier."

EFFIGY AT LEE HIGH

A check at 6:30 a. m. at Robert E. Lee High School, scene of the third effigy hanging, revealed that the figure was gone. The effigy at Lee was hoisted near the top of the flagpole on the school grounds. The others were hung not more than 15 feet from the ground.

Police reported that they had not taken any action in the removal. Assistant Police Chief John B. Rucker said early today that they had no facilities for removing the figures.

Shortly after the first effigy was reported last night, two young servicemen found forms on the windshield of their cars soliciting membership in the U. S. Knights of the Ku Klux Klan. The car was parked downtown at the time.

The form read: "If you desire to join the U. S. Knights of the Ku Klux Klan, fill out the form below and mail to Post Office Box 3112, Eastbrook Station, Montgomery, Ala."

The Eastbrook station reported that such a box does exist but declined to give any further information.

EXHIBIT NO. 9

[From the Alabama Journal, November 14, 1956]

NEGROES HALT CAR POOLS IN CITY—UNITED STATES COURT ASKED TO GIVE APPROVAL DESPITE INJUNCTION—END OF BOYCOTT SEEN AT TWO MASS MEETINGS TONIGHT; SCORES WALK

Stopped by court order from continuing their car pool, Montgomery Negroes in uncounted numbers walked to work today on perhaps the final day of their long bus segregation boycott.

Meanwhile, they turned back to Federal court for the right to resume the car-lift operations as long as the boycott does go on. United States District Judge Frank M. Johnson, Jr., scheduled a hearing at 10 a. m. (c. s. t.).

A Negro leader, Rev. Ralph D. Abernathy, said "on the whole" the Negroes "made the sacrifice and walked to work."

There were indications that the 11-month-old protest against segregated city buses—now ordered integrated by the Supreme Court—will end dramatically tonight.

A scheduled mass meeting to announce the decision was broadened to two rallies tonight because, Abernathy explained, no Negro church is large enough to hold the expected crowd. One meeting will start at 7 p. m. (c. s. t.) and the second an hour later across town at another church.

STATE COURT INJUNCTION

The city won a temporary injunction in State court late yesterday to halt the motor pool until further notice. Circuit Judge Eugene Carter granted the restraining order although the United States Supreme Court had outlawed bus segregation earlier in the day.

Negro lawyers challenged the State court's jurisdiction yesterday because the appeal to Johnson in Federal court was already on file before the city got into court with its injunction request.

CLAIM RIGHTS VIOLATED

Both in their petition in United States court and in arguments before Carter yesterday, the Negroes protested that any interference with their car pool operations—which they described as purely voluntary—would violate their civil and constitutional rights.

With or without help from the Federal court, however, Carter's injunction is destined to have little effect on the car pool system in view of a Negro leader's prediction that the boycott itself would end tonight.

DECISION DUE TONIGHT

Rev. Martin Luther King, Jr., president of the boycott-supporting Montgomery Improvement Association, told newsmen the decision will come at a mass meeting tonight at a Negro church.

The meetings are scheduled for Hutchinson Street Baptist Church at 7 p. m.; Holt Street Baptist at 8 p. m.

While emphasizing that he couldn't speak for all the Negroes of his race, King said he felt certain the Negroes will vote to patronize Montgomery City Lines buses again now that the segregation laws have been knocked out.

CITY DECLINES COMMENT

The city commission at whose request Carter issued the injunction declined comment on the Supreme Court decision. All three commissioners are members of the prosegregation White Citizens Council.

King hailed the ruling as "A glorious daybreak to end a long night of enforced segregation."

It came just shy of 1 year after the start of the boycott last December 5, a protest which became the first mass use of economic force in the South since the Supreme Court ruled against public school segregation 30 months ago.

Negro attorneys sought to use the Supreme Court's decision in their argument before Carter yesterday, but he ruled it out. The judge held it was simply a question of whether the Negroes were operating a legal or illegal car lift and the ruling on segregation "has nothing to do with it."

The issue was primarily whether the car pool was a "private enterprise" operated without a license, as the city contended, or a voluntary share-the-ride plan provided as a service by Negro churches without profit or financial gain.

Along with private automobiles, the Negroes have used, in their own words, "some 17 or 18" church-owned station wagons to take bus boycotters to and from work.

"SERIOUS QUESTION"

City attorneys presented testimony * * * basically whether the car-pool operation is or isn't a private enterprise, but he said the city had presented enough evidence to "raise a serious question."

That issue will be determined later, on a ruling on the city's companion request for a permanent injunction, the judge said.

So will the matter of damages. The city asked for $6,000 on the grounds that the boycott has meant a loss of revenue. Two percent of the gross receipts of the privately owned bus company goes to the city as a franchise tax.

TESTIMONY OFFERED

City attorneys presented testimony from Negro leaders themselves to show how the motor pool is financed from contributions from Negro churches, and how drivers and other employees are paid for their services.

But Negro lawyers insisted the boycotters have a right to use the car pool uninterrupted so long as the boycotters don't pay for their transportation.

Testimony showed the churches have received donations from Negroes both in Montgomery and throughout the Nation to bear the costs of transportation, at one time estimated at $3,000 a week.

NEGROES HAIL BUS DECISION

(By Henry S. Bradsher)

MONTGOMERY, ALA.—"We were badly treated on the buses but now they've given us justice."

That was the reaction of a 78-year-old Montgomery Negro woman to the United States Supreme Court's decision yesterday that bus segregation is unconstitutional. The woman, Mrs. Susie McDonald, and three other Negro women brought the suit that broke city and State bus segregation laws.

White officials across the South took a strong stand directly opposed to hers.

CHARGES ECHO

Charges of unlawful interference with the States, common since the 1954 Supreme Court ban on public-school segregation, echoed again across Dixie.

Leaders of the 11-month-old bus boycott in Montgomery indicated the decision would bring the protest to an end, its purpose now removed.

Calling the decision "a glorious daybreak," the Reverend Martin Luther King, Jr., said "everyone was very happy" at a meeting of boycott leaders last night.

DECISION SCORED

The Governors of Mississippi and Georgia, United States and State Senators, a State attorney general and other officials were among those sharply criticizing the decision.

The Montgomery City Commission, named in the suit, had no immediate comment. Alabama's Attorney General John Patterson, who had filed an appeal to the Supreme Court of a special three-judge Federal panel, was not available for comment.

President Jack Owen of the Alabama Public Service Commission said that "to keep down violence and bloodshed, segregation must be maintained."

KLAN TOURS AREA

A caravan of about 40 carloads of robed Ku Klux Klan members toured Negro residential areas of Montgomery last night, horns blowing, but police said they had no reports of violence.

Gov. J. P. Coleman, of Mississippi, said that his State's segregation laws "are not involved" in the decision and would still be enforced.

The senior judge on the special panel, Richard T. Rives of the Fifth United States Circuit in New Orleans, said the Supreme Court's upholding the panel would set a precedent for other cases.

HILL'S STAND

Alabama's senior Senator, Lister Hill, said "every lawful means to set aside the ruling" should be used.

Herman Talmadge, Senator-elect of Georgia, called again for congressional limitation of the Supreme Court's power.

Georgia's Gov. Marvin Griffin said his state would oppose application of the decision by all legal means.

The woman whose arrest touched off the bus boycott said in Albany, N. Y., last night that the decision was a "triumph for justice" but complete victory would come only when the ruling was made effective.

Mrs. Rosa Parks, a 43-year-old seamstress, said the Supreme Court decree outlawing racial segregation in public schools had been handed down in 1954 but was still not enforced in Alabama.

She addressed a meeting sponsored by the Albany branch of the National Association for the Advancement of Colored People.

Mrs. Parks refused to relinquish a seat on a bus to a white man last December 1. Her subsequent arrest led to the city wide bus boycott by Negroes.

EXHIBIT No. 10

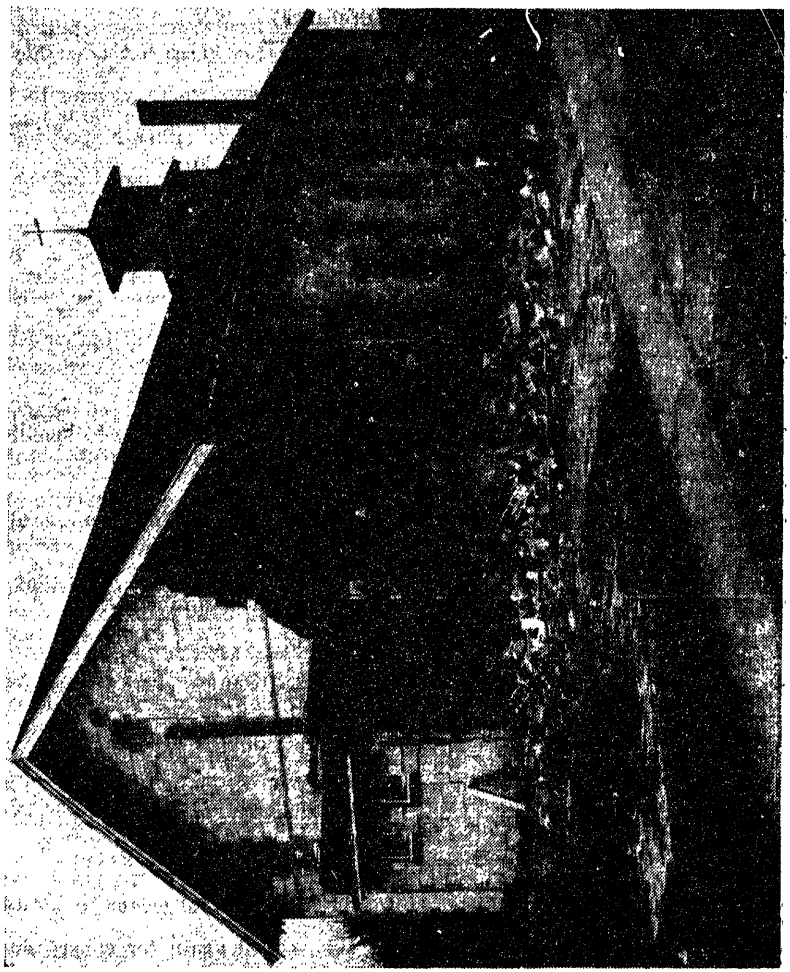


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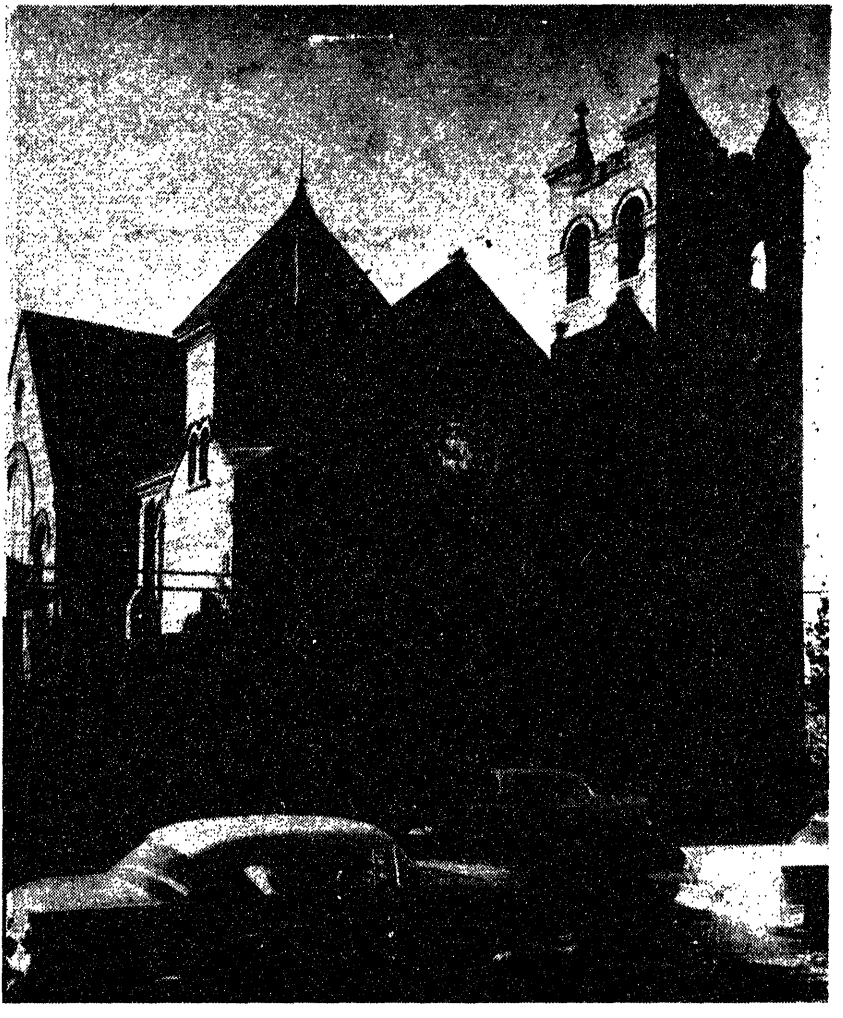
EXHIBIT 12

EXHIBIT No. 13



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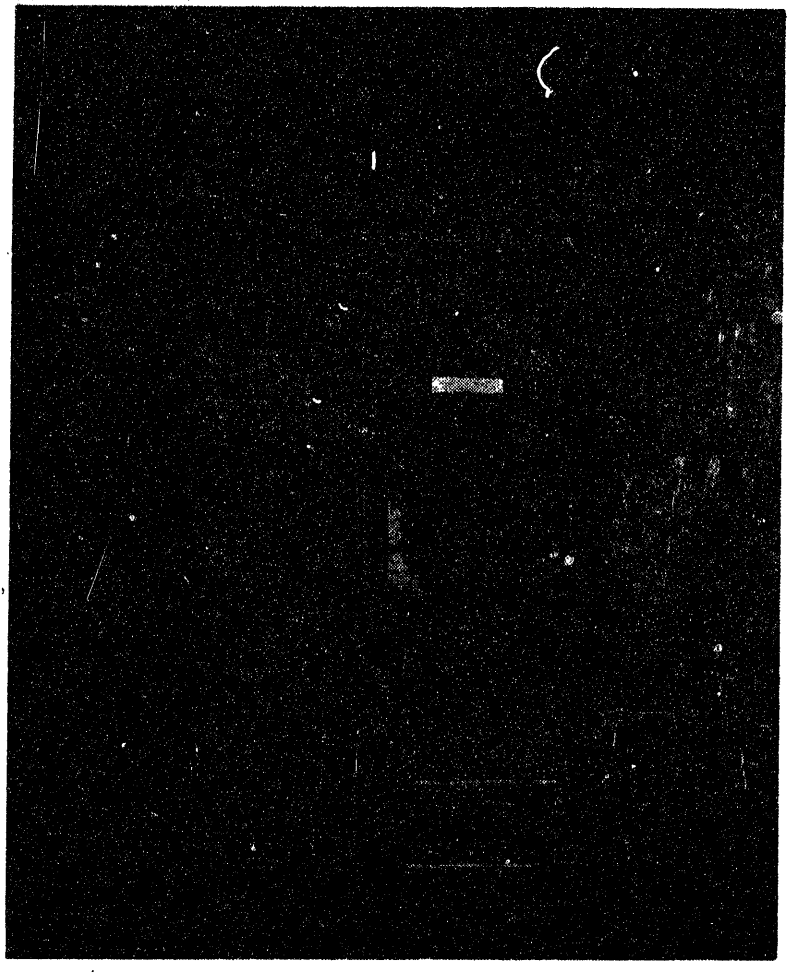

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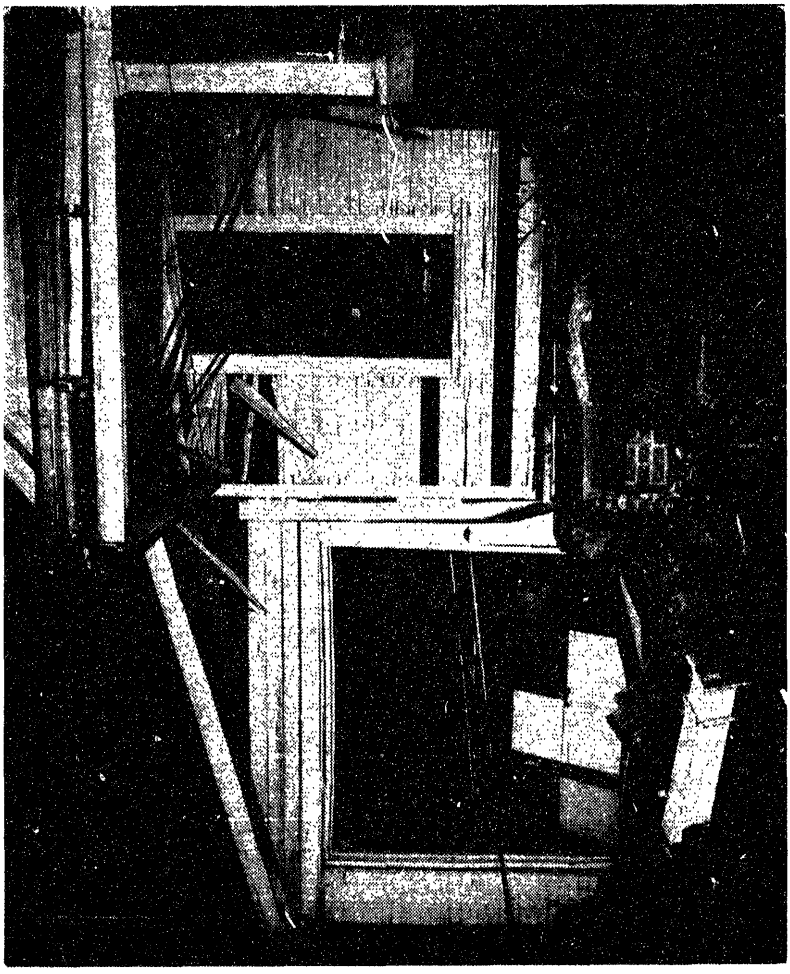

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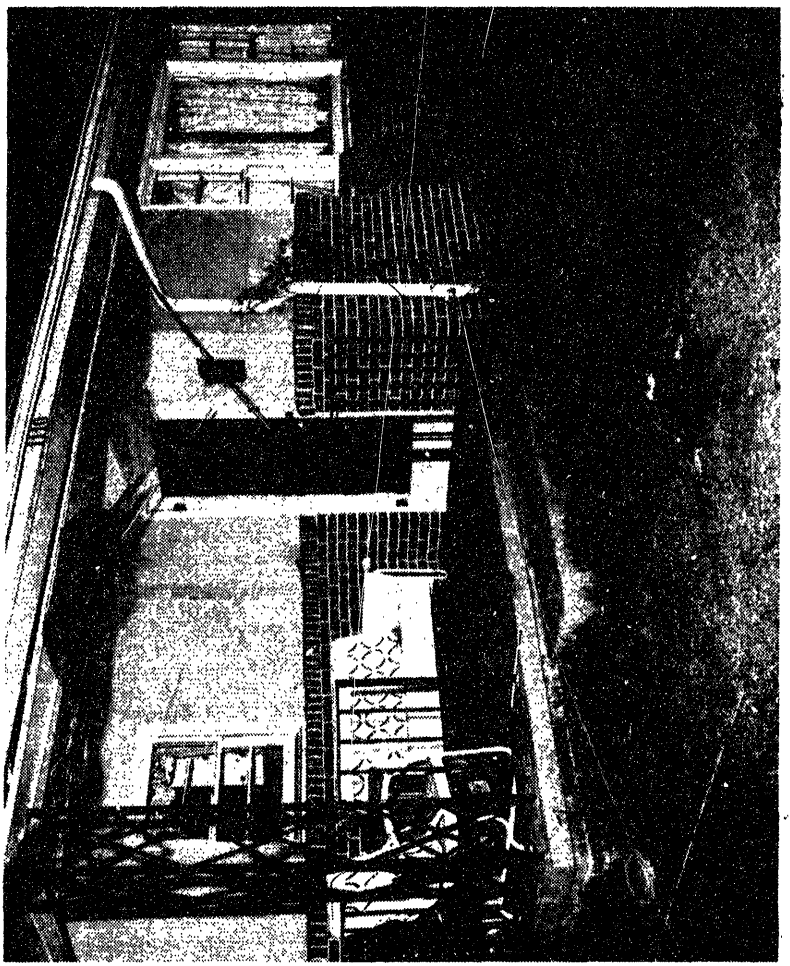

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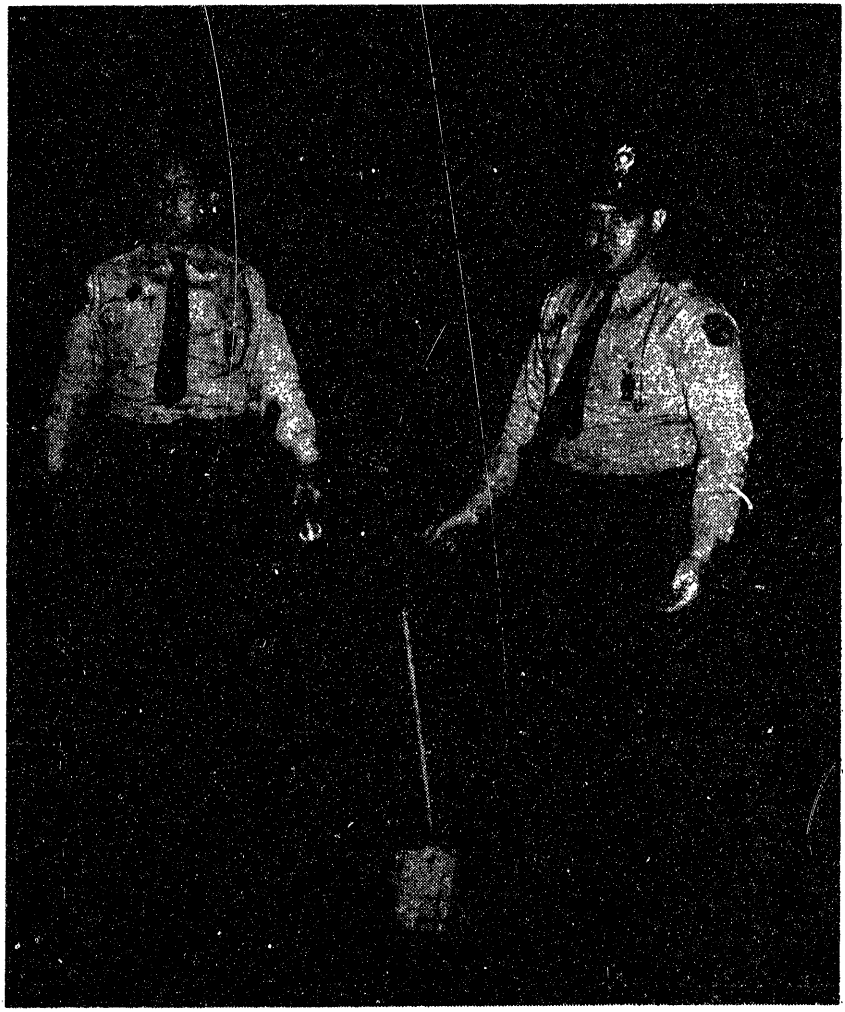

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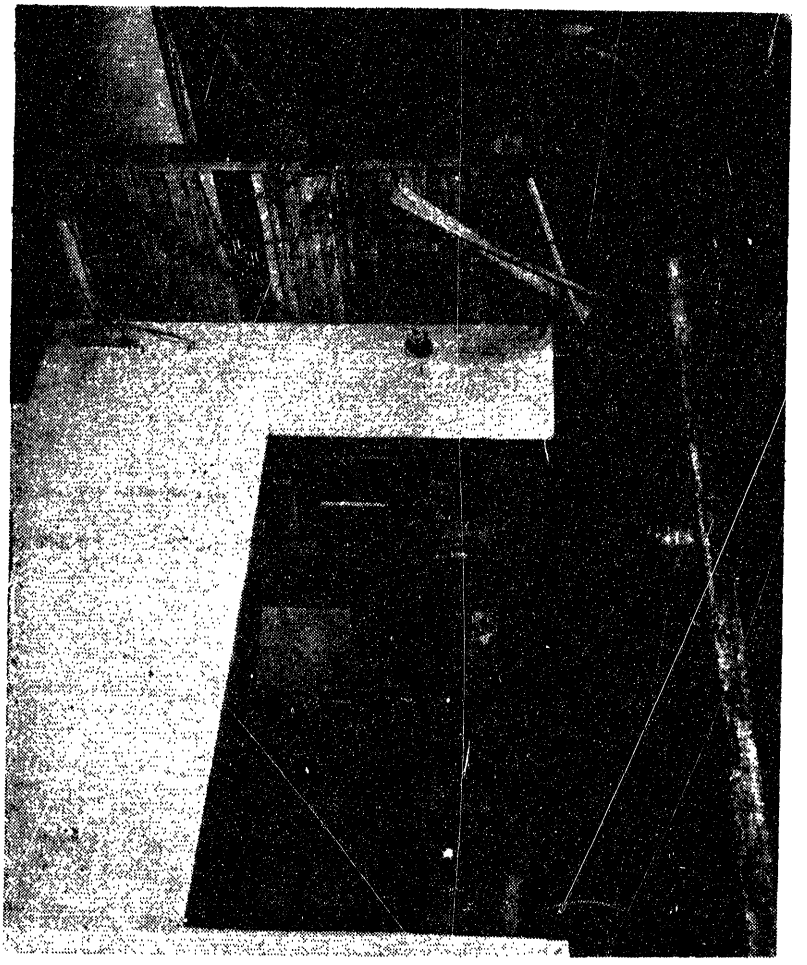

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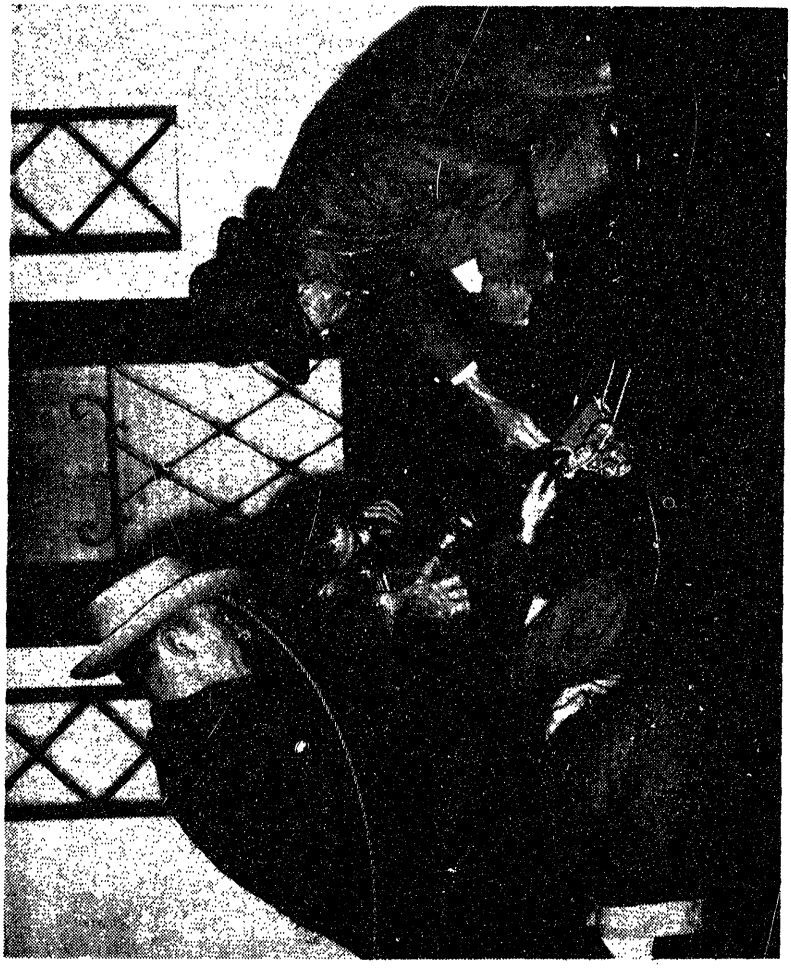


EXHIBIT NO. 21

[From the Montgomery Advertiser, March 4, 1957]

OFF THE BENCH

(By Judge Walter B. Jones)

I SPEAK FOR THE WHITE RACE

Senator Carmack of Tennessee in 1925 made a speech in the United States Senate in defense of the South which was then, as now, under vicious attack. He began his address by saying: "I speak, Sir, for my native State, for my native South."

Today I paraphrase the Senator's words by saying: "I speak for the White Race, my race," because today it is being unjustly assailed all over the world. It is being subjected to assaults here by radical newspapers and magazines, Communists and the Federal judiciary. Columnists and photographers have been sent to the South to take back to the people of the North untrue and slanted tales about the South. Truly a massive campaign of superbrainwashing propaganda is now being directed against the white race, particularly by those who envy its glory and greatness. Because our people have pride of race we are denounced as bigoted, prejudiced, racial propagandists and hatemongers by those who wish an impure, mixed breed that would destroy the white race by mongrelization. The integrationists and mongrelizers do not deceive any person of commonsense with their pious talk of wanting only equal rights and opportunities for other races. Their real and final goal is intermarriage and mongrelization of the American people.

When members of the white race point with pride to its impressive record and call impartial history to witness its technical and political supremacy through the centuries, its cultural creativeness, we are sneered at as breeders of race hatred. Pseudoscientists tell us there is no such thing as a superior race. We are assured by them that the white race will some day be forced into an inferior place by the colored races of the world and that the day of white leadership is nearing its end.

Students of race recognize three main divisions: White, Mongoloid, and Negroid, each created by God with different qualities, instincts, and characteristics, transmissible by descent.

The white or Caucasian race includes peoples whose skin color may be white pink, ruddy or light brown. Their hair is usually wavy or straight. It is never "dead black" or woolly. The white race includes the tall blonds of Northwest Europe, the Scandinavians, Norwegians, Dutch, Swedes, Russians and also the French, Germans, English, Italians and Americans, and further, the Greeks, the Jews, the Arabs, the Spanish and Portuguese.

So let us now study a little history and inquire if the white race has any justification for pride in its contributions to world civilization and leadership.

Members of the white race have ever been the world's discoverers and explorers, and from our race have come bold spirits like Leif the Red, Columbus, Vasco da Gama, Balboa, Magellan, Cabot, Drake, La Salle, and Peary.

Consider sculpture: The white race produced Praxiteles, Myron, Phidias, Donatello, Houdon, Rodin, Thorwaldsen, St. Gaudens, Daniel Chester French, Canova, Bernini, and Herbert Adams.

When you listen and enjoy beautiful music remember the great musicians: Mozart, Bach, Chopin, Beethoven, Handel, Liszt, Brahms, Wagner, and Verdi, are of the white race.

No race has produced poets who compare with our poets: Virgil, Horace, Ovid, Pindar, Lucretius, and Dante; in the English-speaking world Shakespeare, Milton, Byron, Burns, Wordsworth, Pope, Shelley, Tennyson, Whitman, Rossetti, Lanier, and Poe.

When you come to consider the eminent artists of the ages, the white race takes pride in its Fra Angelico, Michelangelo, Botticelli, Velasquez, Raphael, Titian, Rembrandt, Van Dyck, Rubens, Gainsborough, Millet, Corot, Landseer, Whistler, Benjamin West, Abbey and Gilbert Stuart.

The best in literature comes, too, from white authors: Homer, Cervantes, Montaigne, Victor Hugo, Sir Walter Scott, Charles Dickens, Tolstoy, Hans Christian Andersen, Ruskin, Robert Louis Stevenson, Rudyard Kipling, Thackeray, and Macaulay.

The white race is proud of its philosophers: Socrates, Plato, Maimonides, Aristotle, Spinoza, Francis Bacon, Locke, Descartes, Kant, Hume, and Spencer.

Practically all useful inventions have been made by members of the white race: The airplane, steamboat, steel, wireless telegraphy, telephone, the telescope, the typewriter, the X-ray, movable type, the rotary printing press, the sewing machine, the cotton gin, the steam engine, the automobile, the motion picture machine, and the incandescent light bulb.

From the ranks of the white race have come the world's great lawgivers, statesmen and jurists, among them: Solon of Athens, Gaius, Justinian, Grotius, Coke, Jefferson, Blackstone, Wilson, George Mason, and Marshall.

Among the historians of the world the white race can claim Xenophon, Thucydides, Herodotus, Plutarch, Tacitus, J. R. Greene, J. A. Froude, Bancroft, Prescott, and Carlyle.

When you consider the great surgeons and medical men the white race can claim: Hippocrates, Galen, Vessalius, Pare, William Harvey, John Hunter, Crawford Long, J. Marion Sims, Cushing, and Keen.

Remember that Christ, a Jew, is the founder of Christianity. Recall, too, other great religious leaders: Moses, David, Solomon, Judas Maccabeus, John Knox, John Huss, Tyndale, Miles Coverdale, and John Wycliffe.

Every one of the 57 signers of the Declaration of Independence and every one of the 39 signers of the Federal Constitution were members of the white race.

When you look up at the universe of stars and galaxies, recall some of the white race's astronomers and scientists: Copernicus, Galileo, Herschel, Halley, Kepler, Newton, and Sir James Jeans.

So when you call the roll of the world's noble and useful spirits, the men and women of the white race stand up in honor and glory with a just pride in the race's achievements. We have all kindly feelings for the world's other races, but we will maintain at any and all sacrifices the purity of our blood strain and race. We shall never submit to the demands of integrationists. The white race shall forever remain white.

EXHIBIT No. 22

APPLICATION FOR REGISTRATION, QUESTIONNAIRE AND OATH

I, ...do hereby apply to the Board of Registrars of .....County, State of Alabama, to register as an elector under the Constitution and laws of the State of Alabama, and do herewith submit answers to the interrogatories propounded to me by said Board.

.....
Name of Applicant

QUESTIONNAIRE

1. State your name, the date and place of your birth, and your present address:.....

2. Are you married or single:..... (a) If married, give name, residence and place of birth of your husband or wife, as the case may be:.....

3. Give the names of the places, respectively, where you have lived during the last five years; and the name or names by which you have been known during the last five years:.....

4. If you are self-employed, state the nature of your business:.....

(a) If you have been employed by another during the last five years state the nature of your employment and the name or names of such employer or employers and his or their addresses:.....

5. If you claim that you are a bona fide resident of the State of Alabama, give the date on which you claim to have become such bona fide resident:..... (a) When did you become a bona fide resident of ..... County:..... (b) When did you become a bona fide resident of ..... Ward or precinct.....

6. If you intend to change your place of residence prior to the next general election, state the facts:.....

7. Have you previously applied for and been denied registration as a voter:..... (a) If so, give the facts:.....

8. Has your name been previously stricken from the list of persons registered:.....

9. Are you now or have you ever been a dope addict or an habitual drunkard:..... (a) If you are or have been a dope addict or an habitual drunkard, explain as fully as you can:.....

LITHO BRIMMER

10. Have you ever been legally declared insane: (a) If so, give details:

11. Give a brief statement of the extent of your education and business experience:

12. Have you ever been charged with or convicted of a felony or crime or offense involving moral turpitude: (a) If so, give the facts:

13 Have you ever served in the Armed Forces of the United States Government: (a) If so, state when and for approximately how long:

14. Have you ever been expelled or dishonorably discharged from any school or college or from any branch of the Armed Forces of the United States, or of any other country: (a) If so, state the facts:

15. Will you support and defend the Constitution of the United States and the Constitution of the State of Alabama:

16. Are you now or have you ever been affiliated with any group or organization which advocated the overthrow of the United States Government or the government of any State of the United States by unlawful means: (a) If so, state the facts:

17. Will you bear arms for your country when called upon by it to do so: (a) If you answer no, give reasons:

18. Do you believe in free elections and rule by the majority:

19. Will you give aid and comfort to the enemies of the United States Government or the government of the State of Alabama:

20. Name some of the duties and obligations of citizenship:

(a) Do you regard those duties and obligations as having priority over the duties and obligations you owe to any other secular organization when they are in conflict:

21. Give the names and post office addresses of two persons who have present knowledge of your present bona fide residence at the place as stated by you:

OATH

STATE OF ALABAMA . . . . . COUNTY

Before me, ... , a registrar in and for said county and state, personally appeared

. . . . . , an applicant for registration as an elector, who being by me first duly sworn deposes and says: I do solemnly swear (or affirm) that the foregoing answers to the interrogatories are true and correct to the best of my knowledge, information and belief. I do further solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of Alabama; that I do not believe in nor am I affiliated with, nor have I been in the past affiliated with any group or party which advocated or advocates the overthrow of the government of the United States or of the State of Alabama by unlawful means

. . . . . .

Sworn to and subscribed before me in the presence of the Board of Registrars this the . . . . day of . . . . . , 19. . . . .

. . . . . .

Member of the Board of Registrars for . . . . . County

SUPPLEMENTAL APPLICATION FOR REGISTRATION AND OATH

STATE OF ALABAMA . . . . . COUNTY

Before the Board of Registrars in and for said State and County, personally appeared

. . . . . , an applicant for registration who being by me,
(Full name of applicant)

. . . . . , a member of said Board, first duly sworn as follows: "I do solemnly
(Any member present may administer oath)

swear (or affirm) that in the matter of the application of . . . . . for registration as an elector, I will speak the truth, the whole truth, and nothing but the truth, so help me God," testifies as follows:

My name is . . . . . , and I have heretofore executed the "Application for Registration, Questionnaire and Oath" submitted to me by the above-named Board of Registrars.

In addition to the information given on said "Application for Registration, Questionnaire and Oath," I depose and state as follows:

1. I was previously registered in the following State and County in the years named . . . . . .

. . . . . .
(If applicant has never been registered in Alabama or any other state, he should so indicate.)

2. I have never been convicted of any offense disqualifying me from registering.
(Board should call applicant's attention to Section 182, Constitution, and Title 17, Section 18, Code of Alabama 1940. If applicant cannot make foregoing statement, facts shall be ascertained and registration refused, unless fully pardoned and right to vote restored.)

. . . . . .

3. My present place of employment is . . . . . .

4. I know of nothing that would disqualify me from being registered at this time.

REMARKS

. . . . . .

. . . . . .

(Signed) . . . . . .
(Name of Applicant)

Sworn to and subscribed before me this the . . . . . day of . . . . . , 19. . . . .

. . . . . .
(Member of County Board of Registrars)

ACTION OF THE BOARD

STATE OF ALABAMA . . . . . COUNTY

Before the Board of Registrars in session in and for said State and County personally appeared . . . . . (Name of Applicant)

who executed the foregoing application in the manner and form therein stated. The Board having further examined said applicant under oath, touching his qualifications under Section 181, Constitution of Alabama, 1901, as amended, and having fully considered the foregoing Application for Registration, Questionnaire, and Oath, and Supplemental Application for Registration, and Oath as executed, adjudge said applicant entitled to be registered and he was duly registered on this the . . . day of . . . . . , 19 . . in . . . . precinct (or ward) in said county.

(Signed) . . . . . Chairman

(Signed) . . . . . Member

(Signed) . . . . . Member

(Note: The act of actually determining an applicant entitled to be registered is judicial. A majority of the Board must concur. A majority must be present. The power cannot be delegated. Each member present must vote on each application. Not until this is done may a certificate be issued the applicant.)

EXAMINATION OF SUPPORTING WITNESS

STATE OF ALABAMA . . . . . COUNTY

Before the County Board of Registrars in and for said State and County personally appeared

. . . . . (Name of Witness) . . . . . , who being first duly sworn as follows: "I solemnly swear (or affirm) that in the matter of the application of . . . . . for registration as an elector, I will speak the truth, the whole truth, and nothing but the truth, so help me God," testifies as follows:

My name is . . . . . , My occupation is . . . . . , I reside at . . . . . , My place of business or employment is at . . . . . , The name of my employer is . . . . . I am a duly registered, qualified elector in . . . . . precinct (or ward) in . . . . . County in the State of Alabama. I have known the applicant . . . . . (Give Applicant's name) . . . . . for . . . . . years (or months). He is a bona fide resident at . . . . . and to my knowledge has resided thereat for the past . . . . . years (or months). I know of no reason why he is disqualified from registering under the Constitution and laws of Alabama enacted in pursuance thereof.

Space for further remarks

. . . . . .

. . . . . .

(Signed) . . . . . .

Sworn to and subscribed before me in the presence of the Board of Registrars this the . . . . day of . . . . . , 19. . . .

(Signed) . . . . . (Member of the Board)

Note: This application blank, when duly executed, on the final preparation of the "lists" of persons registered, must be delivered by the Board of Registrars to the Probate Judge of the County, whose duty it is to safely preserve it and all accompanying papers. See Title 41, Section 141, Code of Alabama, 1940.

EXHIBIT No. 23

REGISTRATION OF NEGRO VOTERS IN ALABAMA IN 1954

(By J. E. Pierce, Research Secretary, Alabama State Coordinating Association for Registration and Voting)

Foremost among the civil rights of citizens in a democracy is the right to participate in the Government through the free exercise of the franchise. The right to vote for those who are to hold office of trust has been a marked achievement in government and cherished by those who cling to the democratic concept. The question of who should exercise this privilege has baffled many in every democratic society. Especially has this been true in the development of modern democracies. Those who exercise the right of franchise may go a long way in determining the nature of the laws governing human rights and in the enjoyment of the benefits which are to be prorated among the citizens of the State. In the attempt to achieve the goals of a real democracy, the nonprivileged, many have been faced with almost unsurmountable obstacles in their effort to achieve the franchise. This most certainly has been the experience of the Negro in Alabama.

The Negro in his attempt to gain the franchise in this State has met with every conceivable obstacle devised by man. In 1940 there were approximately 2,000 qualified Negro voters in this State. In 1946 this total had risen to approximately 6,000; and by 1952, there were around 25,000 Negro registered voters. Today this number exceeds 50,000. In a period of 12 years the voting strength of the Negro has increased something like 2,500 percent. Yet, this total is less than 10 percent of the Negro population of voting age and only 6.3 percent of the total qualified voters of the State.

Alabama, like other States of the union has attempted to set up some standards for determining the qualification of those who are to exercise the franchise. While it is admitted that some criteria should be used to determine the fitness of those who are to exercise the right of franchise, Alabama has endeavored to provide a means which would enfranchise the white and at the same time disenfranchise the Negro or restrict him to an ineffective number.

The Constitution and laws which set forth the qualification of an elector in Alabama are so worded as to give the board of registrar wide discretionary and arbitrary powers in determining the qualification of a voter. The Alabama laws also have been so drawn as to strike at the most vulnerable spot of the Negro. When the Negro developed to where he was able to overcome the weaknesses which would bar him, some other measures were devised. A brief statement on the qualification of a voter reveals little which one would find difficult to meet. These general requirements are age, residence and citizenship. But here the additional requirements become increasingly more difficult. Not that the Negro could not meet them, but the administration of these additional requirements leaves the board almost unlimited powers in determining the qualification of the voters. Among the provisions of the constitution and laws are the following: he must be of good character, and must embrace the duties and obligations of citizenship under the Constitution of the United States and under the constitution of Alabama. He is furthermore required to answer in writing a questionnaire furnished him by the board of registrars without assistance. This latter requirement will test his ability to read and write.

To aid the board in determining the ability of the person to read and write, the Supreme Court is required to prepare this questionnaire. However, it must be observed here that this is not the sole means of determining the applicant's qualification and the board may resort to other measures in determining the fitness of the elector. The result is that many boards are "Boswelling" the applicants when they appear before them. The reports have revealed in many counties that additional questions are being asked and other evidences demanded by the board to test the fitness of the applicant. In one of the blackbelt counties the applicant must get a signed affidavit from three local merchants who have known the prospective voter for 2 years. When this is done each member will inspect it. If the registrars know the persons vouching for the prospective voter he will get his certificate. Those who have attempted to register under these requirements report no race discrimination but whenever a Negro signs the affidavit the applicant is denied under the simple process of the members of the board claiming they do not know the signee.

The applicants have other difficulties which bar or limit the number of registered voters. The complaints registered against the board showing evidence of discrimination are—

1. Additional burdens are required of Negroes: There must be present when a Negro is registering, an elector to sign the application of the Negro but this is not required of the whites.

2. The Negro must get white persons to sign his application: A Negro cannot do this in many counties as many whites will not sign applications of Negroes.

3. Resignation of the board: In some counties the members of the board of registrar will resign rather than register Negroes. This has been the case in Bullock and Macon Counties.

4. Processing the applications: Many who failed to receive their certificate have been told that the applications have not been processed. White applicants in most instances receive their certificate immediately upon registering.

5. Delay: Many boards discourage Negroes by pretending to be busy doing office work and fail to recognize the presence of the Negro. If the board member chooses to recognize him he will then ask the applicant to wait. After a prolonged wait, the Negro is then informed that there is not a quorum of registrars present if the Negro applicant wants to register.

6. Inadequate accommodations: The space used by the Negro will accommodate only one person and when there is a long line only one can fill out the questionnaire at a time. The long wait discourages some, and others must go back to work.

7. Refusal: Some boards make no pretense but tell Negroes they are not registering Negroes; while others may be more considerate and pretend that there are no blanks. Still others are told to come back at some future date.

8. Hostile reception: Many times the boards will show by their obvious resentment that they do not want to be bothered. If the applicant should make a mistake he is told not to come back. If he has appeared before the board before, he is refused another chance. Some have extended the time to 2 years, other 6 months before a second chance is granted.

Some of the counties do not resort to any of these delaying and evasive techniques, but there are, however, many counties which resort to one or more of these. Since 1952, there have been fewer complaints than formerly. This does not mean that the boards of registrars are void of discrimination. But it is encouraging to find that there is a widespread opinion among many of the citizens of the several counties that the attitude of the board of registrars has changed toward Negro voters. The white citizens of some communities are urging Negroes to register. The candidates for office are soliciting their votes and in many instances encouraging them not to vote for a certain candidate because of his racial stand. Information has been revealed in many counties of the State of the unfavorable attitude of certain candidates which has been very valuable to the voters.

The counties with a large number of Negroes offer more difficulty than others with small populations. To demonstrate this fact, 12 selected counties have been used to illustrate the difficulty of registering by Negroes in counties with large Negro populations.

Table I illustrates very vividly the Negro registration in 12 of the selected counties in the black belt.

TABLE I.—*Negro registration in 12 selected counties in the black belt*

Counties	White population 21 years and over	Negro population 21 years and over	Negro registered voters 1952	Percent of Negro registered 1952	Voters percent of Negroes registered 1952
Barbour [1]	8,012	7,150	63	0.88	250
Bullock	2,633	5,425	7	.129	6
Choctaw [1]	4,012	4,822	12	.24	67
Dallas	12,597	18,145	112	.617	175
Green	1,820	6,628	12	.31	165
Hale	3,680	7,041	[2] 300	4.2	126
Lowndes	2,057	6,514	None	None	None
Macon	3,081	14,539	700	4.8	855
Marengo	5,456	10,266	27	.26	110
Perry	3,757	6,351	83	1.3	234
Sumter	3,600	8,700	None	None	256
Wilcox	3,560	8,218	None	None	None
Total	54,661	103,757	1,325	1.24	2,238

[1] These counties have more whites 21 years of age than Negroes, but there are more Negroes of all ages than whites.

[2] The reported number from this county was excessive in 1952. A check of the list of qualified voters from the weekly issue of the Greenboro Watchman reveals only the number in the last column which is 126.

The Negro population in these 12 counties constitute 66 percent of the total population of these counties of voting age. However, only 2.12 percent of the Negroes of voting age are registered. In 1952 there were fewer Negro registered voters in all of these counties than white registered voters in Lowndes which had a population of only 2,057 of voting age, but had 1,420 registered white voters. Among these, 2 counties have no Negro voters, although there are 14,732 Negroes of voting age in the 2 counties. One county which failed to report in the 1952 study now claims 250. All counties with the exception of Hale and Bullock show an increase. Wilcox and Lowndes are still closed to Negro voters. Dallas County with the largest actual number of Negroes of voting age stands fifth in the number of voters. Some comparison might be made of Dallas and Macon Counties. There are 3,606 more Negroes of voting age in Dallas County than in Macon County, yet, Dallas County has only 20 percent as many voters. Macon county has a larger percent of Negro of voting age than Dallas. Dallas' population of voting age is 59 percent of all persons 21 years of age and over, while over 82 percent of the population of voting age in Macon County are Negroes. It is generally felt that the higher the percentage of Negroes in the population the more difficult it is to register. However, we cannot overlook the role of leadership; and there is a lack of militant leadership in Dallas County.

The educational opportunity at Tuskegee Institute in Macon County and Selma University in Dallas County and for a number of years Payne University, should have given the leadership needed in both places. While the evidence of effective leadership in Macon we cannot boast of this in Dallas. Macon County has instituted two suits against the board of registrars while Dallas has assumed a "do-nothing" attitude. One young man said of this observation when it was pointed out that trained personnel in Dallas included men whose training had been done in such institutions of higher learning as Brown University, Harvard, Columbia, and Colgate Universities: "Our parents have failed us. I have never," he said, "heard my family mention voting in all my life. There is no civic interest in my county." The leadership has, in small ways, paid off in Macon County. Macon County with approximately 16 percent of the population of the 12 counties 21 years and over, has over 38 percent of the voters in them.

Some observation may be made in regards to the two nonvoting counties by Negroes. Both counties have had the advantages of two very outstanding private schools for a number of years. Many outstanding leaders have come out of these counties. There men and women have and now hold leading positions in education and the church. There is a bishop from each of the counties. There is a college president. Some have doctor of philosophy degrees and are leaders in the field of medicine, dentistry, and business. However, no one has had the courage to face the board in these two counties and qualify for the ballot. One citizen amply put it when accosted about lack of Negro voters in his county, he replied, "bread before ballots." This may have summed up the fear of those who are reluctant to become the "the guinea pig" in the quest for first class

citizens in the two counties. When a top official was asked what is the chance for getting a few Negroes registered in one of these counties, he readily replied, "the time is not ripe." Do you really think so? "Yes, it would do more harm than good."

An analysis of the registration of Negroes by congressional districts will reveal further verification of the influence of the Negro population on registration. Table II which tabulates the voting of Negroes by congressional districts will show some marked increase.

TABLE II.—*Voting age of Negroes registered in 1952 and 1954, by congressional district*

	Negro population 21 years and over	Number of Negroes registered in—		Percent Negroes registered	Percent of increase in registration
		1952	1954		
Congressional District I	82,352	3,726	7,127	7.6	91.0
Congressional District II	73,483	1,932	6,261	8.5	224.0
Congressional District III	64,653	2,286	4,284	6.6	91.0
Congressional District IV	50,484	2,413	5,233	10.3	144.0
Congressional District V	24,766	1,224	3,733	15.0	205.0
Congressional District VI	51,042	3,280	7,696	15.0	137.0
Congressional District VII	13,983	842	3,880	27.3	360.0
Congressional District VIII	31,651	2,282	6,506	20.7	187.0
Congressional District IX	131,510	7,200	5,250	4.3	28.5
Total	512,833	25,224	50,028		98.7

It will be noted from table II that the percentage of those voting tends to reflect the weakness of the potential Negro vote. The central and southern congressional districts invariably have a lower percentage of Negro voters than the northern district. The total number of Negroes of voting age is invariably higher in the southern half of the State, but the percentage of Negroes voting is invariably lower.

Of the four southern districts; namely, First, Second, Third, and Fourth, there are 260,976 Negroes of voting age, but only 22,053 are registered voters which is 8.4 percent of the number of Negroes of voting age. Contrasting this situation with the northern districts, we have 121,342 Negroes of voting age with 21,965 registered voters. The percentage of voters is more than double the southern areas. The percentage of those registered in the northern half is 18.1. In the tabulation of the comparison of the north and south Jefferson County, Birmingham is left out. It deserves special treatment as a separate entity.

There are other analysis which should be done in order to get a clearer picture on the registration of Negro voters. Within the districts there is revealed a differential among the counties making up the district. In every congressional district, one county stands out above the rest in number and percentage. These two measures do not correlate in any manner except in the Second or Third Districts. In District 1 (note table III) Mobile County has the largest number of voters but stands second in percentage. Marengo is second in number but is saved from the last place in percentage only by Wilcox which has no registered Negro voters. The second congressional picture is even worse than the first. Montgomery County has the largest number of registered Negro voters but is saved from last place in percentage by Lowndes which has none and Covington County which has a poor record for registering Negroes. Macon County is second in the number of registered voters with three counties less than it in percentage column. Henry County leads in percentage. This is an interesting county. It was not until 1951 that there were any voters in this county. The leadership there will be treated under another heading.

The Fourth Congressional District reveals a different situation from all others. Dallas County, with largest number of Negroes of voting age, has the smallest percentage of Negro voters. This verifies the contention of many persons that the more Negroes in a place the more difficult it is to register. This does not hold true for the percentage of Negroes in the population. There are counties with much higher percentage of Negroes than Dallas County and have more voters numerically registered.

The analysis of the Sixth District is unique in that Tuscaloosa County has 70 percent of the voters in this district. However, 4 counties have over 56 percent of the voting population and only 10 percent of the registered voters for the district.

The 4 counties have 28,598 Negroes of voting age and only 775 registered Negro voters. The Negro population of voting age is 65 percent of the population of voting age in these counties. The area of large planation and excessive Negro population one would expect not only difficulty but timid and frightened Negroes.

The leadership is not what it should be. Those who have assumed this role have done a good job. Unfortunately they have not received too much encouragement from the top brass. The leadership has come mostly from the lower echelon. There is some evidence of fear existing among those who are better qualified to lead. The fear of reprisal is much in evidence. Those better trained for leadership role, too often, fail to assume any part in the struggle because of fear for jobs. This accounts in a large measure, for the lethargy of the mass of our voters. The college-trained Negro, refuses to interest himself in the struggle for the ballot. This is due to two causes; namely, fear for his job, and secondly, too many are not aware of the value of the ballot to a citizen in a democracy.

TABLE III.—*Registration in counties by congressional districts, population of Negroes of voting age, and total vote by district and counties*

	Total number of negroes 21 years of age	Number of Negroes registered 1954	Percent of Negroes registered	Total number registered of all people
Congressional District I	82,352	6,277	7.6	83,000
Counties:				
Choctaw	4,819	67	1.4	4,500
Clark	6,422	400	6.2	7,821
Marengo	10,223	110	1.07	6,050
Mobile	45,085	5,000	11.09	50,000
Monroe	5,914	100	1.67	6,000
Washington	1,077	600	35.7	3,000
Wilcox	8,212	0	0	2,000
Congressional District II	73,483	6,261	8.5	96,000
Counties:				
Baldwin	4,473	515	11.5	13,512
Butler	6,119	600	9.8	7,000
Conecuh	4,427	550	11.29	6,038
Covington	3,151	160	5.08	14,000
Crenshaw	2,709	469	16.7	7,000
Lowndes	6,514	0	0	2,200
Montgomery	34,065	2,150	6.3	27,500
Pike	6,803	567	8.2	9,000
Escambia	5,072	1,250	22.6	10,000
Congressional District III	64,053	4,282	6.6	73,000
Counties:				
Barbour	7,150	250	3.5	5,000
Bullock	5,423	6	.11	2,250
Coffee	3,111	420	13.5	9,750
Dale	2,454	165	6.7	7,633
Geneva	1,685	250	14.8	11,820
Henry	4,027	700	17.3	4,881
Houston	7,200	1,186	16.4	12,000
Lee	8,948	450	5.03	8,000
Macon	14,526	855	5.8	3,500
Russell	10,129	200	1.9	8,259
Congressional District IV	50,482	5,233	10.3	83,000
Counties:				
Autauga	4,036	46	1.13	4,120
Calhoun	8,270	1,545	18.6	23,756
Clay	1,610	84	8.4	7,400
Coosa	1,828	481	23.5	4,536
Dallas	18,132	175	.96	8,100
Elmore	5,542	200	3.6	10,500
St. Clair	2,354	710	30.0	7,403
Talladega	9,310	1,726	18.5	17,374
Congressional District V	24,709	3,733	15.0	116,000
Counties:				
Chambers	7,170	625	8.7	12,000
Cherokee	734	165	22.4	6,767
Cleburne	375	51	13.6	5,400
DeKalb	438			21,000
Etowah	7,653	1,445	18.8	32,561
Marshall	596	2	.33	16,532
Randolph	2,727	945	34.6	9,532
Tallapoosa	5,073	500	9.8	12,000

TABLE III.—*Registration in counties by congressional districts, population of Negroes of voting age and total vote by district and counties*—Continued

	Total number of negroes 21 years of age	Number of Negroes registered 1954	Percent of Negroes registered	Total number registered of all people
Congressional District VI	51,042	7,696	15.0	61,500
Counties:				
Bibb	2,797	295	10.5	4,600
Chilton	2,029	875	43.1	12,000
Green	6,624	165	2.5	1,796
Hale	7,036	126	1.79	3,500
Perry	6,349	234	10.4	7,700
Shelby	3,362	351	10.4	7,700
Sumter	8,598	250	2.87	3,000
Tuscaloosa	14,145	5,400	31.1	24,751
Congressional District VII	13,393	3,880	27.3	101,500
Counties:				
Blount	425	87	20.4	10,500
Cullman	246	81	32.9	16,500
Fayette	1,487	243	16.2	7,800
Franklin	695	325	43.8	10,694
Marion	378	202	[1] 53.4	10,000
Pickens	5,544	517	9.3	6,269
Walker	3,840	2,400	62.5	24,500
Winston	63	25	39.6	6,850
Lamar	1,129	100	8.3	8,000
Congressional District VIII	31,651	6,556	20.7	94,000
Counties:				
Colbert	4,512	756	16.7	13,500
Jackson	1,231	608	41.2	12,000
Lauderdale	3,985	970	24.3	16,500
Lawrence	3,004	412	13.3	8,300
Limestone	4,007	1,200	29.9	18,400
Madison	10,223	1,120	10.9	18,066
Morgan	4,635	1,500	32.3	17,263
Congressional District IX:				
County: Jefferson	121,510	5,250	4.3	102,000
Total	513,768	51,108	9.95	810,000

[1] Figures in this column are taken from the AP release, Birmingham News, Apr. 16, 1954.

Finally, the long period—70 years—(1876–1946) in which the ballot was denied has conditioned the Negro to think negatively of it. He must be awakened to his civic and political responsibility if he is to ever achieve his status as a citizen in a great democracy.

The registration of the Negro in Alabama may be regarded as the No. 1 problem for the Negro in Alabama. A quick glance at table IV gives a vivid picture of the voting strength of the Negro and the gain made in the 2-year period. In many counties the vote has tripled and multiplied even more in several counties. It cannot be called to the attention too often that the percentage makes the achievement look better than it really is. Conecuh County which had a gain of approximately 400 percent, would appear to be phenomenal and the same may appear to be so of many other counties like Monroe, Clark, Chambers, Elmore, and others, but when we consider the base we get a different meaning. It is commendable that such an increase has been made. However, we must not be lulled to sleep over apparent numerical increase, nor become too jubilant over increased percentage.

Autauga County is a case in point, the increase was 200 percent, but the total vote including the increase is only 1.13 percent. These figures do have merit and should be studied carefully. Every county except Jefferson, Hale, and Bullock had an increase. The increases are evidence of two things: First, there is an awakening of the civic responsibility of a growing number of Negro citizens; second, there is developing a new aggressive and responsible leadership. The leadership quality may be determined in several ways: First, organization for stimulating citizens to register; Second, the number of registered voters; Third, the amount of stimulation or motivation shown by those of voting age, and finally the extent to which the Negro has been able to overcome the opposition of the board of registrars to Negro registration.

TABLE IV.—*Negro registration by counties in 1954, number of voting age, and the percent of increase over 1952*

County	Negro population 21 years and over	Registered in—		Percent of registered voters	
		1952	1954	1952	1954
Autauga	4,036	15	46	0.37	1.13
Baldwin	4,473	----	515	----	11.5
Barbour	7,150	63	250	.88	3.5
Bibb	2,797	65	295	2.30	10.5
Blount	425	00	87	0	20.4
Bullock	5,423	7	6	.129	.112
Butler	6,119	250	600	4.1	9.8
Calhoun	8,270	1,000	1,545	12.0	18.6
Chambers	7,170	20	625	.279	8.7
Cherokee	734	55	165	7.47	22.14
Chilton	2,020	300	875	14.7	43.1
Choctaw	4,819	12	67	.25	1.4
Clark	6,422	100	400	1.55	6.2
Clay	1,010	84	----	8.3	----
Coffee	3,111	88	420	2.41	13.5
Cleburne	375	----	51	----	13.6
Colbert	4,516	----	756	----	16.7
Conecuh	4,427	52	550	1.17	11.20
Coosa	1,828	60	431	3.28	23.5
Covington	3,155	100	160	3.1	5.08
Crenshaw	2,709	----	469	----	16.7
Cullman	246	----	81	----	32.9
Dale	2,454	----	165	----	6.7
Dallas	18,132	112	175	.617	.96
DeKalb	438	----	----	----	----
Elmore	5,542	40	200	.72	3.6
Escambia	5,072	200	1,250	3.9	22.6
Etowah	7,653	800	1,445	10.4	18.8
Fayette	1,497	150	243	10.0	16.2
Franklin	695	----	325	----	43.8
Geneva	1,685	----	250	----	14.8
Green	6,624	21	165	.31	2.5
Hale	7,038	300	126	4.2	1.79
Henry	4,027	306	700	7.3	17.3
Houston	7,200	986	1,186	14.0	16.4
Jackson	1,231	150	608	12.0	41.2
Jefferson	121,510	7,200	5,250	5.9	4.3
Lamar	1,190	7	100	.59	8.3
Lauderdale	3,985	400	970	9.9	24.3
Lawrence	3,004	32	412	1.06	13.3
Lee	8,948	224	450	2.5	5.03
Limestone	4,007	----	1,200	----	29.9
Lowndes	6,514	----	----	----	----
Macon	14,526	700	855	4.8	5.8
Madison	10,223	900	1,120	8.7	10.9
Marion	378	35	202	9.1	53.4
Marshall	596	----	2	0	.33
Mobile	45,085	3,550	5,000	7.87	11.09
Monroe	5,914	1	100	----	1.67
Montgomery	34,065	1,300	2,150	3.8	6.3
Morgan	4,635	800	1,500	17.3	32.3
Perry	6,340	83	234	1.3	3.68
Pickens	5,544	----	517	----	8.3
Pike	6,863	30	567	.43	8.2
Randolph	2,727	154	945	5.6	34.6
Russell	10,127	175	200	1.7	1.9
St. Clair	2,354	75	710	3.1	30.0
Shelby	3,362	20	351	.59	10.4
Sumter	8,698	----	250	----	2.87
Talladega	9,310	1,017	1,726	10.9	18.5
Tallapoosa	5,073	200	500	3.9	9.8
Tuscaloosa	14,145	2,500	5,400	17.7	31.1
Walker	3,840	650	2,400	16.88	62.5
Washington	1,677	36	600	2.1	35.7
Wilcox	8,213	0	0	0	0
Winston	63	0	25	30.0	39.6
Marengo	10,223	27	110	.26	1.07

From the reports, from questionnaires sent to leaders and officials in several counties in the State the attempt will be made to categorize the counties according to difficulties in registering Negro voters. The criteria used are based on the number of voters, the attitude of the board of registrars, and the effectiveness of the leadership. There are three counties in which Negroes are unable to register. These are called the (1) prohibited counties, namely, Bullock. Although there are six registered Negro voters, there has actually been a decrease since the last report in 1952. No Negro has been able to register there in several years. The other two are Lowndes and Wilcox. (2) Difficult counties include Autauga, Barbour, Choctaw, Covington, Dallas, Elmore, Green, Hale, Jefferson, Macon, Marshal, Marengo, Monroe, Montgomery, Perry, and Sumter. (3) The moderate counties are: Barbour, Bibb, Clarke, Coffee, Conecuh, Crenshaw, Fayette, Geneva, Houston, Lee, Madison, Mobile, Randolph, Pike, and Shelby. The difficult counties are those in which the Negroes have much trouble qualifying for the ballot. These counties either refuse, turn away a large number under the pretense that they failed to fill out the blank correctly, or place additional requirements through additional questions, permit only white to sign the application or use only white names as witnesses, along with other pretense.

The liberal counties are those in which differences in the treatment of the Negro and white is not very much in evidence. In some of these counties boards of registrars are cordial and encouraging. Among these counties are listed Baldwin, Butler, Calhoun, Chilton, Colbert, Coosa, Etowah, Jackson, Lauderdale, Limestone, Morgan, Talladega, Tuscaloosa, Walker, and Washington.

This classification may be challenged, but to our knowledge this is a fair gradation. In the near future the attempt will be made to do a better job. One of the bases for placing many of the counties in the third class is the voting strength of the county and the percentage of those voting. There are some counties which the leaders claim there is no trouble with the board but the voting strength refutes this claim. Others claim that it is the apathy of the Negro which is rejected on an associated claim that sufficient effort has not been made to stimulate voting by the Negroes. Too often other citizens from the same county tell a different story.

The story may be summarized briefly. The boards of registrars are in many counties becoming more liberal. More Negroes are presenting themselves before the boards for registration. There is an increased awareness on the part of the Negro of the value of the ballot, and he is striving to become a qualified voter. There is an increasing number registering and voting. The boards are still discouraging many Negroes in their attempt to register. There is still a need for effective leadership.

The discrimination against Negro voters has its repercussions on the white. In many counties the whites have also shown a tendency to have a lower voting record. This may be due to the poll taxes. However, both races have shown a creditable increase after its repeal. The future of the Negro may not be as encouraging, dark as that may be, because there is a sinister force at work at this time which makes it difficult to predict the future.

STATEMENT OF IRVING M. ENGEL, PRESIDENT, AMERICAN JEWISH COMMITTEE BEFORE THE SENATE JUDICIARY SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS, FEBRUARY 19, 1957

The American Jewish Committee was organized in 1906 and incorporated by special act of the Legislature of the State of New York in 1911. Its charter states:

"The objects of this corporation shall be, to prevent the infraction of the civil and religious rights of Jews, in any part of the world; to render all lawful assistance and to take appropriate remedial action in the event of threatened or actual invasion or restriction of such rights, or of unfavorable discrimination with respect thereto * * *"

For 50 years, it has been a fundamental tenet of the American Jewish Committee that the welfare and security of Jews are inseparably linked to the welfare and security of all Americans, whatever their racial, religious, or ethnic background may be. We believe that an invasion of the civil rights of any group threatens the safety and well-being of all groups in our land. Hence we are vitally concerned with the preservation of constitutional safeguards for all.

But constitutional guaranties, historical documents, and basic traditions, wonderful though they be, only establish the principles to which we Americans are dedicated. It still takes people to put these principles into practice and keep them alive. And because there are always some people who are slow or unwilling to do what is right, it also takes laws to make people act as they should.

Many States and cities have adopted laws during the past decade to make certain that their residents enjoy the rights which belong to all Americans.

Fifteen States have outlawed racial and religious discrimination in employment, to make sure that qualified workers have an equal chance for jobs.

Three States have forbidden bias in admission to college and professional schools, to give promising young people an equal chance for education.

Some 3 dozen cities have enacted ordinances requiring equal treatment in public and publicly assisted housing, to prevent unfair racial segregation and discrimination.

There are also State and city laws, almost a century old in many parts of our country, barring racial or religious discrimination in parks, playgrounds, restaurants, hotels, and other places of public accommodation, resort, or amusement.

The entire pattern of race relationships in many aspects of life in the United States is in the process of basic change as a result of the rejection of the "separate but equal" doctrine which had been the legal foundation for a racially segregating society.

During the year 1956 some 797 school districts in Southern and border States were operating desegregated schools in compliance with the Supreme Court's mandate. About 110 or 208 Southern tax-supported universities and colleges now admit students without discrimination or segregation based on race or color. Important strides toward equality and democracy were registered in the areas of industry and housing. Maryland became the first State south of the Mason-Dixon line to desegregate its National Guard. Baltimore and St. Louis became the first cities in the Southern border area to enact fair employment practices ordinances albeit, without enforcement provisions. The President's Committee on Government Contracts reported that business and industrial leaders "are responding in encouraging numbers to the philosophy that equal job opportunity is both good business and good citizenship." Eighteen major airlines agreed to end their bans on the employment of Negro pilots. In the field of housing, New York extended the nondiscrimination provisions of its law to housing built with Government-guaranteed money.

Among the greatest advances in civil rights during 1956 were the changes wrought in the sphere of public accommodations. The Civil Aeronautics Administration banned the use of Federal funds to build or improve segregated restrooms, dining rooms or other airport facilities anywhere in the United States. The Supreme Court ruled that the "separate but equal" doctrine no longer applied to local and intrastate transportation. The Court also made it clear that racial segregation would not be tolerated at any park, playground, bathing beach or recreation area operated by the State or any of its political subdivisions, including cities and municipalities.

But while State and local laws insure equality of treatment and opportunity for millions of Americans, many additional millions are without this protection—or can lose it simply by moving from one city or State to another. Only Congress can adopt nationwide laws, and Congress has failed to enact a single civil-rights measure, as such, in the past 80 years.

All the civil-rights bills currently before this committee have been considered by committees of both Houses of the Congress for the past 10 years at least. In fact, the American Jewish Committee, like other organizations that have supported the expansion of civil rights, has testified on numerous occasions before various committees and subcommittees of the Congress and before executive commissions, in favor of the enactment of civil-rights measures.

On March 14, 1945, Mr. Marcus Cohn, Washington counsel of the American Jewish Committee, appeared before a subcommittee of the Senate Committee on Education and Labor, in support of S. 101, which would have established a permanent fair employment practice committee with enforcement powers.

On May 1, 1947, Dr. John Slawson, executive vice president of the American Jewish Committee, proposed to the President's Committee on Civil Rights a comprehensive program including the following recommendations:

(1) Expansion of the Civil Rights Section of the Department of Justice.
(2) Enactment of a Federal anti-poll-tax bill.
(3) Enactment of a Federal antilynch bill.

(4) Enactment of a Federal fair-employment practice law with enforcement machinery.

(5) Establishment of a Federal commission on civil rights to serve in an advisory capacity to the President and other Government officials.

(6) Enactment of Federal legislation barring discrimination in educational institutions which receive public funds.

(7) Organization of a Government educational program, through various Federal agencies, to promote civil rights and combat prejudice.

On June 13, 1947, Mr. Ben Herzberg, chairman of our legal and civil affairs committee, testified before a subcommittee of the Senate Committee on Labor and Public Welfare in favor of S. 984, which would have established a permanent fair employment practice committee with enforcement powers.

On April 25, 1949, Col. Harold Riegelman, American Jewish Committee vice president, appeared before the President's Committee on Equality of Treatment and Opportunity in the Armed Forces in support of total and speedy elimination of segregation in the services.

On May 12, 1949, Mr. George J. Mintzer testified on behalf of the American Jewish Committee before a Subcommittee on Elections of the House Committee on Administration, to urge the enactment of H. R. 3199 to abolish the poll tax.

On May 25, 1949, as chairman of our executive committee, I testified before a special subcommittee of the House Committee on Education and Labor and urged the enactment of an effective fair employment practice law.

On October 3, 1951, I appeared before the Senate Committee on Rules and Administration in favor of Senate Resolution 105, to give the Senate realistic power to invoke cloture.

Again, on April 18, 1952, I testified before the Subcommittee on Labor and Labor Management Relations of the Senate Committee on Labor and Public Welfare, urging the enactment of effective legislation to prohibit racial and religious discrimination in employment.

On January 27, 1954, Mr. Nathaniel H. Goodrich, Washington counsel of the American Jewish Committee, testified before the Subcommittee on Civil Rights of the Senate Judiciary Committee, in support of S. 1 to establish a permanent commission to promote respect for civil rights.

On February 24, 1954, Justice Meier Steinbrink testified before the Subcommittee on Civil Rights of the Senate Committee on Labor and Public Welfare, on behalf of both the American Jewish Committee and the Anti-Defamation League, urging the adoption of S. 692 to prohibit racial and religious discrimination in employment.

On July 27, 1955 and again on February 6, 1957 I testified before subcommittees of the Judiciary Committee of the House in favor of a comprehensive program to bring our practices and conduct in the area of civil rights into conformity with our basic principles and constitutional guaranties.

The American Jewish Committee believes the enactment of Federal civil rights legislation is long overdue. We think the Congress should enact a comprehensive program:

To protect the right to equality of opportunity in employment;

To set up a commission to evaluate on a continuing basis the status of our civil rights and to report periodically to the Congress and the executive branch of the Government;

To raise the stature of the Civil Rights Section of the Department of Justice to a division, under the supervision of an Assistant Attorney General, staffed and capable of protecting the civil rights of citizens when they are threatened;

To strengthen the Federal civil rights statutes to permit the invocation of Federal jurisdiction whenever citizens are threatened or molested by State or municipal officials for asserting their constitutional or civil rights;

To abolish the poll tax as a prerequisite for voting for Federal officeholders;

To punish anyone who attempts to interfere with a citizen seeking to exercise his right to vote for Federal officials, whether in primary or general elections;

To outlaw racial segregation in all areas subject to Federal regulation or jurisdiction;

To make lynching a Federal offense.

Congressional committees have repeatedly held hearings and issued reports on many facets of this comprehensive civil rights program. Occasionally, the House has passed one or another of the bills introduced to put this program into

effect. Last year the House passed H. R. 627 but it failed to reach the floor of the Senate. The American Jewish Committee supported that bill and we would endorse that type of meaningful legislation in the 85th Congress.

The American Jewish Committee believes it is time the Federal civil rights legislation moved beyond the stage of committee hearings and reports. We express no preference or order of priority among the various civil rights issues before the Congress. We believe the Congress should deal with all of them—thereby bringing our practices and conduct into conformity with our basic principles and constitutional guaranties.

JAPANESE AMERICAN CITIZENS LEAGUE,
Washington, D. C., February 12, 1957.

Hon. THOMAS C. HENNINGS, Jr.
Chairman, Subcommittee on Constitutional Rights, Committee on the Judiciary, United States Senate, Washington, D. C.

DEAR MR. CHAIRMAN: The Japanese American Citizens League (JACL) is submitting this statement, endorsing meaningful civil rights legislation, for inclusion in the record, rather than presenting oral testimony in order that these hearings may be expedited as much as possible and the Senate be given an opportunity to consider this vital subject matter in the immediated future.

Ever since JACL was founded in 1930 as the only national organization of Americans of Japanese ancestry in this country, we have been engaged in the struggle for "equal rights and equal opportunities", and against prejudice and persecution based upon arbitrary considerations of race, color, creed, and national origin.

As Americans of Japanese ancestry, we have been subjected to discrimination because of our race in our immigration and naturalization laws; because of our color in certain legal, social, and economic matters; because of our creed insofar as thousands of our Buddhist Americans are concerned; and because of our national origin in World War II when we were forced to evacuate our west coast homes and associations and to be incarcerated in virtual concentration camps.

Thus, out of our own experiences through the past several decades, we have learned what it means to be denied the basic human dignities. We have also learned that meaningful legislation can contribute much to the elimination of discrimination and persecution. We are, therefore, as an organization and as individuals committed to the proposition that legislation is the most effective and expeditious method to discourage and to minimize violations of civil rights.

At the same time, we have learned too that those who would deny civil rights—whether it be the right to the franchise, to the security of person and property, to the opportunities of employment and education—are strong in their convictions, powerful in their influence, and skillful in their ways.

Mindful of all these factors, we urge that these hearings be completed as quickly as possible and that meaningful civil-rights legislation that will rally the most support be reported. Then it is our hope that under inspired bipartisan leadership the pledges of both the Democratic and Republican Parties, made to all the people last fall, will be redeemed and the Congress will enact long-overdue civil-rights legislation in this session.

To this end, JACL offers its every facility.

Sincerely,

MIKE M. MASAOKA,
Washington Representative.

TUSKEGEE CIVIC ASSOCIATION,
Tuskegee Institute, Ala., February 19, 1957.

Mr. CHARLES H. SLAYMAN,
Chief Counsel, Senate Judiciary Committee on Constitutional Rights, United States Senate, Washington, D. C.

DEAR SIR: I am herewith submitting a notarized statement concerning the situation in Macon County, Ala., with reference to the voter-registration practices. It is my hope that the Senate subcommittee will give the following statement the consideration which it deserves. Enclosed is a photostatic copy of a petition which was sent to the Honorable James E. Folsom, Governor of the State of Alabama, a few days after it was drawn up on August 10, 1956. You

will note that the persons whose signatures and addresses appear on the petition have appealed to the governor, and his associates, urging them to appoint a functioning board of registrars in order that they might qualify as electors.

In spite of the statement attributed to Mr. McDonald Gallion, a member of Attorney John Patterson's staff, Macon County does not have a functioning board of registrars. A newspaper of February 8 or 9 reported that in his testimony before a Federal committee in Washington Mr. Gallion stated that at one time Macon County was without a board of registrars, but that at that time (February 8 or 9) there was a functioning board.

Thank you for the opportunity to present to the committee the attached notarized statement. It is our hope that you will find it convenient to permit us to appear before the committee and testify.

Respectfully yours,

C. G. GOMILLION, *President.*

(The petition referred to appears on p. 900.)

THE PROBLEM OF VOTER REGISTRATION IN MACON COUNTY, ALA.

The citizens of Macon County, Ala., have been without a functioning board of registrars since January 16, 1956, when 1 of the 2 members of the board resigned. This period of 13 months—January 16, 1956, to February 18, 1957—without a board is not singular, in that from July 1948 to January 1949 they were without a publicly functioning board. The Negroes of this county have striven in vain to get the State board of appointment to appoint a functioning board of registrars. They have carried on a voluminous amount of correspondence with State and national figures to get an operative board. No less than six conferences were held during the past year with members of the State board of appointment. During some of our conferences the appointing board members stated that no local persons would agree to serve on the Macon County Board of Registrars. This, however, can be refuted with the fact that nine citizens have submitted affidavits to the Governor, stating that they would serve on the board if they were appointed.

On Sunday, July 8, 1956, many nonvoters of Macon County met and decided, among other things, to send a petition to the Governor, the State auditor, and the commissioner of agriculture and industries, who constitute the State officials who appoint the county boards of registrars.

On August 10, 1956, the local citizens sent a petition to the Governor and his associates, bearing the signatures of 727 unregistered citizens who pleaded with him to bring about the appointment of a board for this county. This appeal has only brought promises, but no publicly functioning board. This petition was followed up with letters from many of the petitioners.

It should be noted that this county has not had its full complement of board members (3) since June 1, 1954, when J. J. Rodgers, who was the third member, was elected to the State legislature. While the personnel of the Macon County Board of Registrars has changed, it has not had over 2 members for 30 months. Indeed, it had only 1 member from January 16 to September 20, 1956 (8 months), at which time Grady Rogers, who was removed in November 1955, was reappointed to membership on the board. Mr. Rogers' appointment failed to effectuate a functioning board of registrars for the reason that Mr. W. H. Bentley, the only other member of the board, was hospitalized at the time of Mr. Rogers' appointment, and was not able to perform his duties as a registrar. Mr. Bentley died on December 4, 1956.

Between December 18, 1955, and February 18, 1957 (14 months), the Macon County Board of Registrars took applications only for 2 days, December 18, 1955, and January 16, 1956. On December 18, 1955, it received 29 applications, and on January 16, 1956, 23 applications were made, for a total of 52 during the 14 months. It issued 28 certificates of registration from this number. This was 53 precent of those making applications. These figures reflect the efforts made by Negroes. As white persons were registered in other places, no records could be compiled of their registration activities.

Macon County State Senator Englehardt is quoted in the August 17, 1951, issue of the magazine Alabama as recommending gerrymandering the county in order that Negroes will not be in an influential political position. He proposed to slice up Macon County, giving portions of it to adjoining counties. He clothed this scheme with legal sanction by saying, "No court could tamper with such a change in Alabama's county boundaries."

On July 19, 1952, Frank Stewart, then commissioner of agriculture and industries, in which capacity he served as a member of the State board of appointment,

was reported in that day's issue of the Montgomery Advertiser as having said to 200 white members of the Alabama Farm Bureau meeting at Shorter, Ala., that he would uphold the fight of the Macon County Board of Registrars in fighting for their rights and principles. He further said, "It is necessary for us to stand together for our rights and to maintain our citizenship ideas."

During the years 1951 through 1954, 1,024 Negroes made application for certificates of registration to the Macon County board. Of this number only 270 were certified, or only 1 for each 3.76 applying. During 1954, 366 citizens made 456 applications (many of these made applications in previous years). The board issued 167 certificates, or 1 certificate for each 2.7 applications made during this period. The average number of certificates issued per day for the 33 days the board worked publicly was 5. The board took an average of 13.5 applications per day.

The board was required by law to work 40 days during 1954, but it met publicly and took applications only 33 days, or it worked only 82.5 percent of the required time. On the days it met, the board would take applications for 5 hours (9:30 until 3:30); have 1 hour for lunch. With no information to the contrary, it is assumed that the board is required to work 8 hours per day when in session. The difference in the number of hours they worked publicly and the number which they were required to work amounted to 3 hours per day.

During this period Negro citizens appealed to the public and public officials through newspaper advertisements to use whatever influence they had to get a democratically functioning board of registrars in Macon County. Many national newspapers and periodicals have pointed up the efforts of Negroes in Macon County to get enfranchised.

On August 25, 1945, a class action court suit was filed against the Macon County board in the United States Federal Court for the Middle District of Alabama. At the same time 25 cases were filed in the local State circuit court. On November 6, 1953, five local Negroes filed a class action court suit in the United States Federal Court for the Middle District of Alabama.

C. G. GOMILLION.

Subscribed and sworn to before me this 19th day of February 1957.

[SEAL] LOUIS A. RABB, *Notary Public.*

My commission expires June 26, 1957.

STATEMENT OF LAMAR OLIN WEAVER TO THE SENATE JUDICIARY SUBCOMMITTEE ON CIVIL RIGHTS, MARCH 8, 1957

My name is Lamar Weaver, 1131 North 29th Street, Birmingham, Ala. I offer this statement to the Senate Judiciary Subcommittee studying proposed civil rights legislation.

When you cross the Mason-Dixon line into the South you enter a foreign country, a country where violence and mob rule are king, and the Ku Klux Klan holds meetings in open violation of the law wearing hoods and robes. They also carry firearms without permits.

One instance I can give is a meeting in the month of January 1957, in the Central Park Theater which is now rented and occupied by the North Alabama Citizens Council. One Alabama citizen council figure, Asa Carter, according to warrants sworn out by Birmingham city detectives, did shoot with intent to murder not less than 1 nor more than 2 participants in a Ku Klus Klan meeting (Federated Ku Klus Klan of the Confederacy) who had rented the theater for that night and were holding a meeting with hoods and robes on. According to the testimony given by the injured parties or party, they were carrying concealed weapons. At this date Asa Carter is under a $2,000 bond for the above-named charge. Witnesses testify also in the case that Asa Carter was hooded and robed also.

Another instance took place on March 6, 1957, at approximately 2:30 p. m. on or about the terminal station, Birmingham, Ala. A white man, one Lamar Olin Weaver, was mobbed, kicked, and struck with a suitcase, had his car rocked by an angry mob which numbered between 50 and 100. On the same date and at the same time, the Reverend F. L. Shuttlesworth and wife bought a ticket to Atlanta, Ga., and sat in the white waiting room of the above-named station.

A mob of approximately 300 persons, some of whom identified themselves to Lamar Olin Weaver as Klansmen; and one person who was identified by the

Birmingham Post-Herald newspaper and the Birmingham News newspaper as a known Ku Klux Klan man, namely, R. E. Chambliss, was seen to shove the Reverend Shuttlesworth twice. Chambliss was taken by the arm by a plain-clothes detective, moved a few feet and then released, and the mob jeered and cursed the Reverend Shuttlesworth, wife, and Weaver.

The Reverend Shuttlesworth was shoved as he entered the terminal station to purchase a ticket. He then sat down in the white waiting room. Weaver shook hands with him. Shortly afterward, Weaver was mobbed.

Entered at this time is a copy of the Birmingham Post-Herald of Thursday, March 7, 1957, describing the above-named events which occurred on March 6, 1957.

The Reverend F. L. Shuttleworth's home and church were bombed Christmas night, 1956. Shuttlesworth is the leader of the Alabama Christian Movement for Human Rights and as such leader has led the Negroes in legal attempts to outlaw segregation of the races on public transportation in Birmingham.

Lamar Olin Weaver was an announced candidate for public improvements commissioner of the city of Birmingham for the 1957 campaign. I was running on a prointegration ticket. After announcing my prointegration stand, I received threats not only to my life but to the life of individual members of my family. My family left the city of Birmingham and I, myself, have had to leave the State of Alabama. I also ran for city commission in 1956 on the same platform and received 3,150 votes and placed third in a field of 5.

I wish to make a brief statement in reference to jury duty. In Dallas County, Ala., only one Negro has ever served on a jury. In Monroe, Wilcox, and Lowndes Counties, Ala., no Negroes have ever served on a jury. Negro populations in those counties outnumber the white populations.

The counties of Lowndes and Wilcox, Ala., have no Negro registered voters. Bullock County, Ala., has only five Negro voters. The Negro population in the 12 counties of the Black Belt constitute 66 percent of the total population of these counties of voting age. However only 2.12 percent of the Negroes of voting age are registered. Every obstacle devised by man is used to prevent Negroes from registering. In Macon County, Ala., a registrar board member resigned before he would register a Negro. This is a county in which the world-famous Tuskegee Institute is located.

[From the Birmingham Post-Herald, March 7, 1957]

STONED BY ANGRY DEPOT MOB, WEAVER FLEES; PAYS $25 FINE—INTEGRATIONIST SAYS HE PLANS TO LEAVE CITY—VISITED STATION TO SEE NEGROES TESTING RACE LAW

(By George Cook)

Integrationist Lamar Weaver, who recently withdrew from the city commission race, yesterday afternoon was fined $25 and costs on traffic charges growing out of his flight from an angry crowd which stoned him at Terminal Station.

Weaver, who went straight to City Hall after his automobile was stoned a block north of the railroad station, had asked that he be tried as speedily as possible so he might leave town.

SMASHED WINDOWS

An angry crowd, failing to overturn Lamar Weaver's car, smashed the windows of the auto as Weaver fled from a parking place near Terminal Station shortly after noon yesterday.

Last night, Weaver's mother, Mrs. Ruth Rogers, said her son had packed his clothing and had left home. She said he told her he was not going north, but was going south and would let her know later his whereabouts.

In finding Weaver guilty, Judge Oliver B. Hall ruled that the defendant had placed himself in an unsafe position by going to the railroad station to see the Rev. F. L. Shuttlesworth and the latter's wife off on a trip.

Weaver, who greeted the Shuttleworths at the station, was asked by police to leave (along with all other persons who did not have business there).

As he walked north on 26th Street, North, toward Sixth Avenue, he was followed by a jeering group of white men, some of whom, Weaver said, earlier had identified themselves to him as klansmen.

Weaver's car, a convertible, was parked on an unpaved extension of Sixth Avenue east of 26th Street. As he got into the car, a group of men rushed to the right side, seized it below the frame and tried to overturn it.

Weaver started the engine of his car and began backing out from a space between two other cars and the crowd temporarily fell back.

Then members of the crowd began hurling large stones. Four windows of the car were smashed.

In testimony before Judge Hall, Weaver also said that somebody ripped a hole in the cloth top of the car with a knife and that a rock made another hole.

FIRST ASSAULT

This group of men attempted to overturn Lamar Weaver's car as the latter started the engine to leave. The assailants drew back from the car as Weaver attempted to maneuver backward so he could get away. (Photo by Tom Langston.)

Weaver started his car up again and his rear bumper banked into the side of a parked car owned by John Strickland of 7804 Seventh Street, South, an engineer for the Frisco Lines.

The crowd began shouting that Weaver was attempting to leave the scene of an accident and the latter once more stopped and partially opened his door.

At this point, an unidentified man pulled the door open and struck Weaver in the face with a suitcase.

Meanwhile, another car had pulled into the narrow street, partially blocking it. Weaver worked his auto around the other, gunned the motor and sped out into the intersection through a red light and on down Sixth Avenue, North, in the direction of City Hall.

Shuttlesworth claimed in Atlanta last night, after what he called an integrated train ride with his wife from Birmingham, that the fact he was not arrested "seems to mean that the city had abandoned segregation. * * *"

"The only logical thing to do now is to take the segregation signs down in the station," he told United Press.

Trouble first had begun to brew at the railroad station when Shuttlesworth announced he and his wife were going to sit in the white and interstate waiting room at noon.

"SEEING THEM OFF"

Lamar Weaver chats with the Reverend Shuttlesworth and his wife just prior to the latters' departure for Atlanta at Terminal Station. The Negro couple sat in the "white, interstate waiting room."

A large group of policemen were sent to the station and an angry crowd already had gathered before the arrival of the Shuttlesworths and a number of Negro friends in a taxicab.

Shuttlesworth and his wife walked to the main door to the waiting room, where the minister's path was blocked, first by an individual and then by a scuffling group.

Police broke up the scuffle. Shuttlesworth, however, did not attempt to force his way through this door, but turned and walked a short distance to another door and entered the waiting room.

At first he and his wife purchased two tickets, one for Shuttlesworth to Attalla, and the other for his wife to Atlanta.

The Atlanta train was scheduled to leave at 1 : 25 p. m. and the Attalla train at 3 : 45 p. m. Shuttlesworth later exchanged his ticket for one to Atlanta in order to travel with his wife. He said he would get a friend to drive him back to Attalla.

The Negro couple then took a seat in the "white, interstate waiting room."

Weaver, according to his testimony in court, said he arrived at the station about 11 : 30 a. m. and had gone there on a "spur-of-the-moment decision," although he had been called the previous night by Shuttlesworth, who told him of the trip to Atlanta.

Weaver denied that he was aware that the Shuttlesworths planned to sit in the white waiting room, or that the affair had been staged for publicity.

Weaver joined the Shuttlesworths on their bench for a short conversation after the couple had been photographed. Weaver also was photographed with the couple, while a large crowd stirred outside with faces pressed to windows.

Police said afterward they were not aware Weaver was in the waiting room until he joined the Shuttlesworths.

Officers then asked Weaver to leave and escorted him to the door and through the group of men milling immediately in front of the entrance.

Shouts of "Bring him out here" were heard as Weaver was led to the door.

Weaver turned north on 26th Street, followed by a jeering crowd yelling, "Run, boy, run," and cursing.

The crowd made no move toward violence, however, until Weaver had turned the corner out of sight of Terminal Station.

The rock-throwing incident then occurred.

Police checked tickets of the Shuttlesworths after they took their seats, but made no arrests.

Commissioner Robert E. Lindbergh pointed out yesterday afternoon:

"It definitely was concurred in by Federal District Judge Seybourn Lynne and our legal department that there never has been a State law or city ordinance governing segregation in railroad stations."

Such regulation comes either from the Alabama Public Service Commission or the Interstate Commerce Commission, Lindbergh said.

"And we don't know who their enforcing agencies are.

"Therefore, having bought a ticket, not creating a disturbance or doing anything to create a breach of the peace, as we see it, the Shuttlesworths were within the law."

However, Mr. Lindbergh added, "we were prepared to make whatever arrests necessary in the event anyone had planned to stage an affair deliberately calculated to breach the peace."

Weaver's trial on the traffic charges originally had been scheduled March 13.

In view of his anxiety to leave town, however, the city first reset the trial for this morning, and then for yesterday afternoon.

"I know my life isn't worth a nickel," he said.

Weaver said that he had been recognized by several men while he was waiting for the Shuttlesworths to appear and that they approached him and identified themselves as klansmen.

"They told me they had come down to the station to prevent trouble," he said.

Several others, he said, told him, "We're going to get you good. We ought to kill you right now."

"If it hadn't been for the police," he said, "people would have been killed."

"I believe the thing was ill staged. I didn't think people were that hotheaded. If I had to do it over again, I wouldn't have gone there. But I think it was my right to go there.

"This is the first time I've ever been in a mob. I never want to be in another one."

Weaver said he saw several faces of persons in the crowd following him "who used to be friends of mine and others I've worked with in times past."

Weaver, 29, said he regretted leaving Birmingham; that he had lived here since he was 6 and that "I love the town."

"I was raised with Negroes and played with them as children," he said. "I didn't get into this thing for publicity or money, but because I believe that way. I realized certainly I wouldn't win any popularity contest."

He said that he "is convinced now, however, that the South is not ready for integration"—particularly with reference to schools.

AT THE TRIAL

Lamar Weaver, being tried in charges of reckless driving and running a red light, is questioned by Officer N. R. Daniel.

"The advocation of integration of schools," he said, "will cause serious trouble and bloodshed."

Weaver said he would continue to work for "human rights" elsewhere in the country.

He said that he has been invited to make a statement for the Senate Civil Rights Committee and that he will go first to Washington.

"From there, I'll probably go on north," he said.

In finding Weaver guilty of the traffic charges, Judge Hall said:

"Mr. Weaver, you know as well as I do that these are troublesome times here."

Agitation, he said, is "unwise. There are extremists on both sides and the middle-grounders are the ones who are going to have to solve this problem."

Judge Hall said that in his opinion Weaver was not "without fault" in his exposure to danger.

The judge said he was convinced that the Shuttlesworth action was a "planned maneuver" and that what followed robbed Weaver of any plea of "self-defense" in his flight to escape the crowd of rock throwers.

To merit a plea of self-defense, the judge said, the defendant must be "free of any fault."

SHUTTLESWORTH TOLD OF PLAN

"Notice" of yesterday's waiting-room sitdown by Rev. F. L. Shuttlesworth was given to news services two and a half hours before the Negro minister entered Terminal Station.

Wire services, radio stations, and newspapers were called at 9:30 a. m., or shortly afterward, being told of Shuttlesworth's intended action. Several radio newscasts carried the report during the morning.

Lamar Weaver denied at his trial late yesterday that there was anything "planned" about the day's activities.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D. C., March 8, 1957.

HON. THOMAS C. HENNINGS, Jr.,
Chairman, Subcommittee on Constitutional Rights,
Senate Judiciary Committee, Washington, D. C.

DEAR MR. HENNINGS: Enclosed herewith is a statement which I would like to have incorporated in the record of the hearings by your subcommittee on pending civil-rights legislation immediately following the statement made by Mr. Lamar Weaver, of Birmingham, Ala.

With best wishes, I remain,

Yours sincerely,

GEORGE HUDDLESTON, Jr.,
Member of Congress.

STATEMENT OF HON. GEORGE HUDDLESTON, JR., MEMBER OF CONGRESS, BEFORE THE SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS OF THE SENATE COMMITTEE ON THE JUDICIARY

My name is George Huddleston, Jr. I am United States Representative from the Ninth District of Alabama, which includes the city of Birmingham, hometown of Mr. Lamar Weaver. It is my understanding that Mr. Weaver has submitted a statement to this committee.

Currently, this individual is riding a wave of publicity growing out of an unfortunate racial incident. This incident was precipitated by Mr. Weaver himself, who acted in the face of enraged tempers and certain violence. This incident was carefully conceived and deliberately executed, with full knowledge of the probable results.

There is no denying that feelings on the racial issue run high in the South today. Mr. Weaver took advantage of this situation to draw personal attention to himself. He walked in the face of physical harm, knowing full well the consequences which would result. When Mr. Weaver states, as he has in his statement, that mob rule is king, he is speaking from a personal viewpoint. To say the least, he is not overly popular in his hometown.

This put-up incident, although unfortunate, was calculated and devised to create an ugly smear on the South.

Since Mr. Weaver has given a statement to this subcommittee, I believe the members would like to know a little of his background in order to evaluate the substance of what he has to say.

On June 27, 1947, Mr. Weaver was sentenced on a charge of embezzlement of the United States mails to 18 months' imprisonment in the Federal reformatory at El Reno, Okla. He served over 13 months of his sentence and was finally conditionally released on August 22, 1948. His erratic temperament and unpredictable personality are well known to the people of Birmingham.

It should be readily apparent to the members of the subcommittee that the character and reliability of this witness who, by the way, is the only southern white man who has spoken in favor of integration at this hearing, are not of the highest order.

GEORGIA VOTERS' REGISTRATION ACT AND ALL AMENDMENTS TO DATE

VOTERS' REGISTRATION ACT

No. 297 (House Bill No. 2)

To be entitled an Act to effect a complete revision of all and singular the laws of this State in any way dealing with the subject of registration and qualification of voters by providing for the annulment of all registrations heretofore effected by providing for a permanent registration and providing for the cancellation of the registration of voters who fail to vote in at least one election in a two-year period and fail to request a renewal of their registration and the procedure to be followed with respect to such persons, the manner of applying for registration, the procedure to be followed by the county registrars in handling such applications, the forms to be used in connection therewith, the tests to be submitted to voters before qualification, the appointment and qualification of county registrars, their deputies, their terms, powers, duties and compensation; to provide for the preparation of a disqualified list by the clerk of the superior court, the tax collector and/or tax commissioner and ordinary, their duties and compensation; to provide for the preparation of a qualified voters' list for general elections and primaries and a supplemental list for special elections and primaries and the use and disposition of the same; to provide for hearings and proceedings on the subject of registration, qualification, and challenge of voters; the notices to be given and served, the subpoenas to be issued, the manner and method of service, appeals from the decisions of the registrars and how made; to prescribe the questions to be submitted to applicants and that such questions and no others be used in testing them; to provide for the penalty of disfranchisement for those giving false information or failing to give correct information in response to queries of the registrars or their deputies; to provide for the voting of persons removing from one county or militia district to another; to provide that any person who shall sign more than one registration card or who shall sign the registration card in an assumed or fictitious name, or who shall vote more than once, or who shall vote in an assumed or fictitious name, or vote without signing the registration card, or who shall aid or abet any one else in doing these things shall be guilty of a misdemeanor; to provide that any registrar or deputy who permits one to sign the voter's oath without reading it shall be guilty of a misdemeanor; to provide that any registrar or any other person who falsified any registration card or voters' list shall be guilty of a felony, and prescribing the punishment and penalty therefor; to provide for the registrars furnishing authorities of municipalities and boards of education voters' lists for election purposes, and the compensation of the registrars for furnishing such lists, to declare the intention of the General Assembly in passing this Act, to provide that in all counties of this State having a population of 200,000 or more, according to the present or any future United States census, the county tax collector or the county tax commissioner, as the case may be, together with two deputies of said collector or commissioner, to be named by the collector or commissioner, shall constitute the county registrars in such counties, and for other purposes.

Be it enacted by the General Assembly of the State of Georgia, and it is hereby enacted by the authority of the same:

SECTION 1. That effective from the date of the approval of this Act no person shall be permitted to vote in any election in this State for presidential electors, for members of Congress, for United States Senator, for Governor; Lieutenant Governor, for State House officers, for members of the General Assembly, for county officers, county commissioners, justices of the peace, for constables, for members of county board of education, where chosen by the people, nor in any other popular election to fill any other State or county office now existing, or hereafter created, nor in any State or county election for any purpose whatever, unless such person shall have been registered and qualified as hereinafter provided.

SECTION 2. That except as hereinafter provided with reference to any special election occurring before the first general election list shall have been prepared as provided in this Act, all registrations heretofore effected are hereby declared null and void.

SECTION 3. The first registration list hereunder shall be prepared in the year 1950, but the process of registration under this Act shall start immediately on its passage and approval and all persons seeking to register and qualify as voters shall be registered and qualified as herein provided.

SECTION 4. The registration provided for in this Act shall be permanent, but electors shall be required to maintain their status as qualified voters by the exercise of their franchise at least once in every two years as herein provided.

SECTION 5. At any special election, held before the first list under the terms of this Act shall have been prepared and filed, the general election list of qualified voters of the year 1948, in conjunction with a supplemental list prepared in accordance with the special election provisions hereafter set forth shall be used. In the same manner the last general election list of qualified voters shall be used for any special election occurring after said list is prepared but before the preparation of a new general election list. Nothing in this section shall

be construed so as to prevent the registrars from purging said old list and the supplemental list and remove therefrom those persons not entitled to vote.

SECTION 6. The judge of the superior court of each county shall appoint quadrennially three upright and intelligent citizens of said county upon the recommendation of the grand jury of said county as county registrars. The grand jury shall submit to the judge the names of six upright and intelligent citizens and the appointment shall be made from the six submitted. The appointments shall be entered on the minutes of the court. Said appointment shall be for a term of four years and the appointees shall hold office until their successors are appointed and qualified. The said judge shall have the right, however, to remove said registrars at any time upon the recommendation of the grand jury, or upon proof that said registrars have failed to discharge their duty or are unfit for said appointment, and the judge of said court shall have the power to appoint successors in case of removal, death or resignation, who shall hold office until the next regular term of the grand jury of said county, when a new registrar or registrars shall be recommended by the grand jury and appointed by the judge as provided herein. If at the time appointments are to be made, the grand jury has been discharged, the judge shall recall them for the purpose of making recommendation as aforesaid. The first appointees hereunder shall have a five year term ending in 1953.

SECTION 7. Notwithstanding any other provision of this law, in all counties of this State having a population of 200,000 or more, according to the present or any future United States census, the county tax collector or the county tax commissioner, as the case may be, together with two deputies of said collector or commissioner, to be named by the collector or commissioner, shall constitute the county registrars in such counties. The order of the tax collector or tax commissioner appointing such deputies shall be filed in the office of the clerk of the superior court and there permanently preserved. In the event said tax collector or tax commissioner, or any deputy named by the collector or commissioner as registrar, should cease to hold office as collector, commissioner, or deputy, prior to the expiration of his term as registrar, his successor in office shall serve the unexpired term. In the event of removal of any such registrar, as provided in Section 6 of this Act, a successor in office shall be appointed by the judge of the superior court from two names recommended by the grand jury for appointment to the unexpired term, and these proceedings shall be entered upon the minutes of the court.

SECTION 8. Before entering upon his duties each of the county registrars shall take the following oath before some officer authorized to administer oaths under the laws of this State; to wit: "I do solemnly swear that I will faithfully and impartially discharge, to the best of my ability, the duties imposed upon me by law as county registrar."

SECTION 9. The tax commissioner or tax collector of the county shall be a deputy to the boards of registrars and shall perform the duties required of him under this Act. Said tax collector or tax commissioner may, with the assent of the board of registrars, designate one or more of his own deputies, to act as additional deputies. The registrars may appoint additional deputies and hire clerical help to aid them in the discharge of their duties.

SECTION 10. The registrars of the several counties shall supply themselves with a supply of registration cards in the form hereinafter prescribed which shall be used by them in connection with the qualifying of those persons seeking to register as qualified voters.

SECTION 11. The form of the registration card shall be as follows:

REGISTRATION CARD

District _____ Name _____ Date _____
Georgia, _____ County

I do swear, or affirm, that I am a citizen of the United States; that I am 18 years of age, or will be on the _____ day of _____, 19____; that I have resided in this State for one year, and in this county for six months, immediately preceding the date of this oath, or will have so resided on the _____ day of this calendar year; that I believe I possess the qualifications of an elector required by the Constitution of this State; that I am not disfranchised from voting by reason of any offense committed against the laws of this State. I further swear, or affirm, that I reside in the _____ District, G. M., or in the _____ ward of the City of _____, at number _____ on _____ Street; that my age is ____; that I was born _____;

that my mother's maiden name is or was _____; that my occupation is _____. I further swear or affirm that I have correctly answered the question appearing elsewhere on this card under the words, "Question propounded to applicant."

(Sign here) _____

Sworn to and subscribed in the actual presence of:

_____
(Deputy) Registrar

Question Propounded to Applicant

1. Have you ever been convicted of a felony or crime involving moral turpitude? If so, name the offense, the place and court of conviction and the approximate date.

To be Filled in By Deputy or Registrar

1. The applicant read (could not read) Article _____, Section _____, Paragraph _____ of the Constitution of Georgia (United States) intelligibly (unintelligibly).
2. The applicant wrote (could not write) Article _____, Section _____, Paragraph _____, of the Constitution of Georgia (United States) legibly illegibly).
3. The applicant stated that due solely to physical infirmity he could not read, Article _____, Section _____, Paragraph _____ was read to him and he explained it intelligibly. (Could not explain it.)
4. Applicant was this day served with notice to appear before registrar on _____ day of _____, 19____.

The above form may be printed on cards or separate pieces of paper, which in addition to the form may contain such other data as the registrars may desire to enter thereon, but for convenience the card, or sheet, or sheets of paper shall be referred to the "Registration Card."

SECTION 12. The registrars shall designate one of their number, or any deputy employed by them, to take charge of the registration cards. The said registrars, or either of them, or any deputy employed by them may administer the oath required of an elector and attest the same.

SECTION 13. The registrars shall keep said registration cards at the tax collector's or tax commissioner's office, where one or more of their number, or one or more of their deputies shall be stationed for the purpose of taking applications for registration. The presence of any such official shall not be required except at such times as said office is open at regular hours.

SECTION 14. The registrars shall, in each year in which there is an election for Governor or members of the General Assembly, cease their operations of taking applications from persons desiring to vote in such election six months before the date of such election. During the period while the general election list is being prepared they may suspend the operation of taking applications from those desiring to vote in subsequent elections, provided the office shall be kept open at least one day and the same day in each week during this period for receiving applications, and provided this day is advertised in the official organ of the county.

SECTION 15. Any person desiring to be registered and qualify as a voter shall apply to the registrars, or to the deputy stationed in the office of the tax collector or tax commissioner. Such person shall furnish the official with information which will enable him to fill all of the blanks appearing on the front and back of the registration card. On completion of the form the official shall administer the oath to the applicant and then have him sign it, and the official shall then attest it.

SECTION 16. Upon request of the applicant the official taking the application shall read or repeat the voter's oath distinctly to the applicant, and if the applicant cannot sign his name, the said officer shall sign it for him, the applicant making his mark thereto.

SECTION 17. Before the form of the voter's oath is completed, the official in charge shall inquire of the applicant whether he has ever been convicted of any felony or crime involving moral turpitude in any court in this or any other State. If the answer is in the affirmative a notation shall be made upon the card of the crime, the date, and the court of conviction. If the offense is one of those enumerated in Paragraph I of Section II of Article II of the Constitution

of this State the registrars shall summarily reject the application. The official shall also submit to the applicant for his perusal one of several sections of the Constitution of this State or of the United States, which sections shall have been previously selected by the registrars, and the applicant shall be required to read it aloud, and write it out in the English language. The sections so submitted shall be noted on the registration card, and whether or not it was intelligibly read and legibly written out should be noted. In all cases where it appears that the applicant solely because of physical disability is unable to read, the section shall be read to him by the official and he shall be called upon to give a reasonable interpretation of it. The opinion of the official as to whether the interpretation is reasonable shall be noted on the card, and the card shall be turned over to the registrars. If the applicant states he cannot read or write and his inability to do so is not due to physical infirmity, but that he desires to qualify as a voter by reason of his good character and his understanding of the duties and obligations of citizenship under a republican form of government, the fact that he cannot read and write shall be noted on the card. As the registration cards are completed they shall be turned over to the registrars for their consideration.

SECTION 18. The failure on the part of the applicant to disclose information sought by a direct question of the registrars, or either of them, or their deputy, in connection with the taking of the application or at subsequent proceedings, or the giving of false information, shall be cause for the applicant's application to be rejected by the registrars on their own motion, and shall also be a cause for challenge, which if sustained, shall result in the voter's name being removed from the list.

SECTION 19. All decisions of the registrars under this Act are subject to appeal and all appeals must be in writing and shall be filed with the registrars within ten days from the date of the decision complained of, and shall be returned by the registrars to the office of the clerk of the superior court to be tried as other appeals. Pending the appeal and until final judgment in the case, the decision of the registrars shall remain of full force.

SECTION 20. As the registration cards are turned over to the registrars they shall proceed to a consideration of the qualifications of the applicants in the following manner:

1. In those cases where the applicant applied for qualification on the basis of literacy and it appears from the data on the registration card that he read the selected portion of the Constitution intelligibly and that he wrote the selected portion legibly, or that solely by reason of a physical disability he could not read it, but was able to interpret the selected portion reasonably when read to him, and said card shows no reason for disqualification, or non-compliance with the provisions of the law, the registrars shall pass an order declaring the applicant prima facie qualified. The interpretation in this case shall be in the applicant's own words, giving words the significance ordinarily attached to them by laymen of average intellect and attainments. In those cases where it appears from the registration card that the applicant could not write the selected portion of the Constitution legibly or could not read it intelligibly the registrars shall test him in the same manner as a person applying for leave to register and vote by reason of good character and understanding of the duties of citizenship under a republican form of government as herein provided.

2. In those cases where the applicant applied for qualification solely on the basis of his good character and his understanding of the duties of citizenship under a republican form of government, he shall be notified in writing to appear before the full board of registrars on a day and time certain he or she shall at that time be subjected to an examination as to his or her qualifications, said examination to be conducted in accordance with the procedure hereinafter prescribed. If no reason for disqualification is developed by the examination and it discloses no noncompliance with the law, the registrars shall pass an order declaring the applicant prima facie qualified. If reason for disqualification is shown, an order shall be passed rejecting the application, and stating the reason.

3. In cases arising under the preceding paragraph and in all cases arising under this Act where the applicant or the voter as the case may be is required to be served with a notice of a hearing, unless otherwise provided, said notice shall specify a day not less than one, nor more than ten days after the date of the notice. The notice may be served by mailing same to applicant or voter at the address given on his application card. In the case of an application for registration, the official may hand the applicant a copy of the notice in person at the time he applies for registration, and this service shall be sufficient. The registrars, if

present or in session at the time an application is filed, may proceed to the examination of the applicant instanter and without notice.

4. Failure to appear at the time specified in any notice under this section or in any notice given in connection with any hearing under this Act shall constitute cause for dismissing an application or of removing a voter's name from the list and the registrars shall enter an order to that effect. No new application for registration shall be received from the applicant until after the beginning of the next calendar year. However, the application may be reinstated on motion of the applicant, if he can prove that he was not in fact served with such notice or furnished with a notice.

5. In all cases under this section and under this Act where an order is entered denying the application or removing a voter's name from the list, the registrars on the day that the order is issued shall notify the party by mail addressed to the address shown on the registration card. If any adverse decision is reached when the party is present no such notice is required.

SECTION 21. The examination which registrars shall submit to those persons who claim the right to register and vote on the basis of good character and understanding of the duties of citizenship under a republican form of government shall be based upon a standard list of questions, and the questions on this list and no others shall be submitted to each applicant. In each instance where an applicant in this category is examined, the registrars shall keep a record of the questions submitted and the answers given and file the record thus made with the registration card. In order to ascertain whether an applicant is eligible for qualification as a voter in this classification, the registrars shall orally propound to him the thirty questions on the standardized list set forth in the following section. If the applicant can give factually correct answers to ten of the thirty questions as they are propounded to him, then the registrars shall enter an order declaring him to be prima facie qualified. If he cannot correctly answer the ten out of the thirty questions propounded to him, then an order shall be entered rejecting his application.

SECTION 22. The registrars shall procure an ample supply of cards or sheets of paper on which shall be printed the standard list of questions set forth below. One of such cards or sheets of paper shall be used in the oral examination of each applicant who seeks qualification as a voter in the classification set forth in the preceding section. The cards shall show in one column the correct answers to the questions, and the answers of the applicant shall appear in a parallel column, so that each question, the correct answer thereto and the applicant's answer will all appear on the same line. If the answer of the applicant to a given question is correct, this fact may be indicated by a check in the applicant's answer column; if the answer is incorrect, the answer of the applicant should be written in said column. It shall be the duty of the registrars to see to it that the answers in the column showing the correct answers are revised from time to time so that the correct answers will appear in the appropriate column at the time each applicant is examined. The standard list of questions and the present correct answers thereto and the form to be used under this and the preceding section is as follows:

Standard List of Questions

(To be propounded to those seeking to register and qualify as voters under Article II, Section I, Paragraph IV, Sub-Paragraph 1 of the Constitution)

Date of Examination _____

Name of Applicant _____

Address of Applicant _____

Questions	*Answer*	*Answer of Applicant*
1. Who is President of the United States?	Harry S. Truman	
2. What is the term of office of the President of the United States?	Four years	
3. May the President of the United States be legally elected for a second term?	Yes	
4. If the President of the United States dies in office, who succeeds him?	Vice President	

Questions	*Answer*	*Answer of Applicant*
5. How many groups compose the Congress of the United States?	Two—The Senate and House of Representatives	
6. How many United States Senators are there from Georgia?	Two	
7. What is the term of office of a United States Senator?	Six years	
8. Who are the United States Senators from Georgia?	Walter F. George and Richard B. Russell	
9. Who is Governor of Georgia?	Herman Talmadge	
10. Who is Lieutenant Governor of Georgia?	Marvin Griffin	
11. Who is Chief Justice of the Supreme Court of Georgia?	Henry Duckworth	
12. Who is Chief Judge of the Court of Appeals of Georgia?	I. H. Sutton	
13. Into what two groups is the General Assembly of Georgia divided?	Senate and House of Representatives	
14. Does each Georgia County have at least one representative in the Georgia House of Representatives?	Yes	
15. Do all Georgia counties have the same number of representatives in the Georgia House of Representatives?	No	
16. In what city are the laws of the United States made?	Washington, D. C.	
17. How old do you have to be to vote in Georgia?	18 years old	
18. What city is the capital of the United States?	Washington, D. C.	
19. How many states are there in the United States?	48	
20. Who is the Commander-in-Chief of the United States Army?	The President of the United States	

(The following questions requiring a different answer according to the localities in which the applicant lives, the registrars in printing this list will insert under the column headed "Correct Answer" the correct answer to each question.)

Question	*Correct answer*	*Answer of applicant*
21. In what Congressional District do you live?		
22. Who represents your Congressional District in the National House of Representatives?		
23. In what State Senatorial District do you live?		
24. Who is the State Senator that represents your Senatorial District?		
25. In what County do you live?		
26. Who represents your County in the House of Representatives of Georgia? If there are more than one representative, name them.		
27. What is the name of the County seat of your County?		

Question	*Correct answer*	*Answer of applicant*
28. Who is the Ordinary of your County?		
29. Who is the Judge of the Superior Court of your circuit? If there are more than one, name one additional Judge.		
30. Who is the Solicitor-General of your circuit?		
Total Correct Answers		

The registrars shall keep a reasonable supply of extra copies of the question and answer blanks and distribute them to any member of the public who may request copies.

SECTION 23. The electors who have qualified shall not thereafter be required to register or further qualify, except as may be required by the board of registrars. No person shall remain a qualified voter who does not vote in at least one election within a two-year period unless he shall specifically request continuation of his registration in the manner hereinafter provided.

Within sixty (60) days after the first day of January in each year beginning on January 1, 1952, the tax collector or tax commissioner, as the case may be, shall revise and correct the registration records in the following manner:

He shall examine the registration cards and shall suspend the registration of all electors who have not voted in any general, special or primary election, State, county or municipal, within the two years next preceding said first day of January, except as may be forbidden by Article 2, Section 1, Paragraph 5 of the Constitution of the State of Georgia; provided, however, that on or before March 1st of said year he shall mail to each elector at the last address furnished by the registrant, a notice substantially as follows:

"You are hereby notified that according to State law, your registration as a qualified voter will be cancelled for having failed to vote within the past two years, unless on or before April 1st of the current year you continue your registration by signing the statement below and returning it to this office or by applying in person."

Application for continuation of registration:

"I hereby certify that I reside at the address given below and apply for continuation of my registration as a voter."

Signature of elector _____

Present residence address _____

Date _____

Effective April 1, 1952, the tax collector or the tax commissioner, as the case may be, shall cancel the registration of all electors thus notified who have not applied for continuance, and the names of all such electors shall be wholly removed from the list of qualified electors. Any elector whose registration has been thus cancelled may re-register in the manner provided for original registrations. No person shall remain a qualified voter longer than he shall retain the qualification under which he registered. As the 1948 voters' list is preserved for special elections which may take place prior to the preparation and filing of the first general election list hereunder, the tax collector shall until such time conform to the provisions of Section 34-115 of the 1933 Code as amended by act approved February 5, 1945, and more fully appearing on page 136, etc., of the Acts of the General Assembly of 1945, but the time for mailing the notice provided for in said Code section is hereby extended for an additional fifteen days.

SECTION 24. **The tax collector or tax commissioner and the clerk of the superior court and the ordinary of each county shall, on or before the 20th day of April in each year, prepare and file with the registrars a complete list, alphabetically arranged, of all persons living in the county on the 10th day of April of that year who appear to be disqualified from voting by reason of idiocy, insanity, or conviction of a crime, the penalty of which is disfranchisement, unless such convict has been pardoned and the right of suffrage restored to him, or by reason of death as evidenced by the records of the local registrar of vital statistics or otherwise. The tax collector or tax commissioner, as the case may be, shall furnish the names of those removed from the list of registered voters for failure to request continuation of his registration after written notice stating that said registration will be cancelled for failure to vote within the past two years.**

SECTION 25. **In preparing said list of disqualified persons, said tax collector, or tax commissioner, ordinary and clerk of the superior court shall act on the best**

evidence obtainable by them, and they shall especially examine and consider the records of the criminal courts of the county. In the event that there is a difference of opinion among said three officers as to whether any name or names shall be placed on said list of disqualified persons, the concurrent votes of any two shall control in the matter. The tax collector or tax commissioner, as the case may be, shall also enter on the list of disqualified voters the names of those who have failed to vote in at least one election within the past two years and who have failed to request continuation of their registration after written notice that their registration will be discontinued for failure to vote in at least one election within the past two years.

SECTION 26. The registrars shall on the 20th day of April in each year in which a general election is to be held, or on the day thereafter if the 20th day of April occurs on a Sunday, begin the work of perfecting a true and correct list of the qualified voters of their county. They shall place on said list only those persons they have found to be prima facie qualified to vote under the terms of this Act and those persons whose applications were pending on said date and whom they shall subsequently find to be prima facie qualified to vote. In preparing said list they shall examine the list of disqualified persons furnished them by the tax collector or tax commissioner, the ordinary and the clerk of the superior court, and if any applicant's name is found thereon, they shall not place his name on the voter's list. If the information comes to them after the preparation and filing of the list, they shall call upon him to show cause why it should not be removed from the list.

SECTION 27. The registrars shall proceed with their work of perfecting said list of qualified voters and shall complete the same not later than June the first. In any county in which the registrars find that one board cannot complete its work by said date, they may call upon the judge of the superior court to appoint one or more assistant boards of registrars with like duties and responsibilities, and the work shall be divided as the regular board may direct. Should the registrars be unable for any reason to complete their work by said date, then the said registrars may at any time before the 20th day of August during the year in which general elections are held, make and file said list of registered and qualified voters.

SECTION 28. Within five days after completing said list of qualified voters, the registrars shall file with the clerk of the superior court of their county the completed list as prepared and determined by them. Said list shall be alphabetically arranged by militia districts, and in case a city is located in the county, by the wards of said city, and the said list shall be the list of the registered and qualified voters for the general election to be held in said year for the Governor and other State officers and members of the General Assembly. No person whose name does not appear on said list shall vote or be allowed to vote at said general election or at any party primary to nominate candidates for the offices to be filled at said general election, except as hereinafter provided.

SECTION 29. Each person whose name is on said list for the general election shall be entitled to vote in said general State election for said year, and all primaries to nominate candidates for offices to be filled at said general elections, and also at the Federal election in November of said year, and the election in November of said year, and the election for justices of the peace and constables to be held in said year, and at all primaries for the nomination of candidates for the offices to be filled at said elections and at all primaries for county offices, and all other primaries and elections to be held for any purpose during said year and after the filing of said registration list or during the succeeding year, provided, however, that such person is not found to be disqualified subsequent to the filing of the list.

SECTION 30. If any person whose name is not on said registration list, desires to vote at any election or primary subsequent to the general State election whether in said year in in the succeeding year, he shall at least six months before the election at which he desires to vote, apply to be registered as a voter, and his application shall be processed in the same manner as the applications of persons qualifying to vote in the general election. The registrars shall, six months before such election other than the general State election, cease taking applications to qualify persons to vote in such election and shall within twenty-five days thereafter pass upon such qualifications in the same manner as in other cases and file with the clerk of the superior court a supplemental list showing the names of additional voters who are entitled to vote at such election subsequent to the general election. Any person whose name appears upon said list may vote at such election and at any primary to nominate candidates for offices to be filled at said election, provided that the registrars shall purge said

list before filing it of the names of all persons who will not be qualified to vote at said election. All voters on said list shall have the same rights as to elections subsequent to such election as persons on the list for the general election. Provided, that at any special election the provisions of the next succeeding section shall be followed as to registration and voting.

SECTION 31. Any person who has registered for a general election shall, if otherwise qualified to vote at any special election before the next general election, be listed and entitled to vote at such special election. Five days after the call of said special election, the registrars shall cease taking applications from persons desiring to register and qualify to vote therein, and proceed to examine into the qualifications of the applicants in the same manner as herein provided with reference to applicants desiring to qualify to vote in general elections. The registrars shall then prepare a supplemental list showing the names of additional voters who are entitled to vote at such special election, and any person whose name appears on said list may vote at such special election, but the registrars shall purge said list before filing it of all persons who will not be qualified to vote in the same manner as provided with reference to the list for the general election. The list so prepared and arranged alphabetically and divided according to districts and wards as in the case of general election lists shall be filed in the office of the clerk of the superior court within ten days after the call of said special election. It shall be the duty of the registrars upon the call of a special election to purge the list of registered voters prepared for the last general election of any names subsequently disqualified for any reason and to furnish the managers of such special election two lists, one composed of the names of voters entitled to vote by reason of their registration and qualification for the last general election, and the other made up of the names of those entitled to vote by reason of their subsequent registration as hereinbefore provided, and no one shall be entitled to vote in said special election unless his name is on one of the lists furnished by the registrars.

SECTION 32. The board of registrars shall have the right and shall be charged with the duty of examining from time to time the qualifications of each elector whose name is entered upon the list of qualified voters, and shall not be limited or estopped by any action taken at any prior time.

SECTION 33. Any person, who, after application, was unlawfully denied the right to qualify as a registered voter, may have his name placed upon the list of registered voters, upon satisfactory showing made to the registrars that he is entitled to register and qualify. The registrars shall not be confined to the evidence furnished by the list of disqualified voters, but may have access to the original papers or books from which said lists were compiled, and may hear any competent written evidence or oral testimony, under oath, concerning the disqualification of any person whose name appears on the list taken from the registration cards. The registrars may likewise hear any competent written evidence or oral testimony, under oath, concerning the removal of the disqualification of any person whose name appears on the list of disqualified voters. The names of all persons who were not of age, or who had not resided in the State and county the requisite time at the date of filing an application for registration and qualification, shall be placed on the proper lists prepared for any election occurring after the date when such persons reached the age of eighteen years or have resided in the State and county the requisite time, provided such persons are otherwise qualified.

SECTION 34. For the purpose of determining the qualification or disqualification of persons as aforesaid, the registrars may, upon one day's notice, require the production of books, papers, etc., and upon like notice may subpoena and swear witnesses. If the registrars shall differ among themselves upon any question coming before them, the concurrent votes of two of said registrars shall control.

SECTION 35. The sheriff, his deputy, or any lawful constable of said county may serve all summonses, notices, and subpoenas, as issued by said registrars, and shall receive such compensation as is customary for like services.

SECTION 36. If the right of any person whose name appears on the list of qualified voters is questioned by the registrars, said registrars shall give such person written notice of the time and place of the hearing which shall be served upon said person in the manner hereinbefore provided for other notices.

SECTION 37. The list of registered voters prepared by the registrars shall be open to public inspection, and any citizen of the county who is himself a registered and qualified voter shall be allowed to contest the right of registration of any person whose name appears upon the voters' list, and upon filing a con-

test as to the qualifications of the voter the registrars shall notify the voter and pass upon the contest. Each challenge shall specify the grounds of the challenge, and when notice is given the voter by the registrars, a copy of such challenge shall be furnished the challenged voter at least one day before passing upon the same.

SECTION 38. The registrars shall, at or before the hour appointed for opening the polls, place in the possession of the managers of the election at each voting precinct in the county one or more printed or clearly written copies of the lists of registered voters for such militia district or city ward in which the voting precinct is situated, said list to contain all the information hereinbefore provided for; and the registrars shall, in like manner, place in possession of the election managers of the voting precinct at the courthouse, at the county seat, proper lists for each militia district, the voting precinct of which is situated outside of an incorporated town. The list for a given district or ward may be divided into as many sections as there are ballot boxes in said district or ward. Said list of registered voters shall be duly authenticated by the signatures of two of said county registrars.

SECTION 39. All persons whose names appear on the list of registered voters placed in the possession of the election managers, and no others, shall be allowed to deposit their ballots according to law, at the voting precinct of the militia district or city ward in which they are registered, but not elsewhere, except as hereinafter provided. If in any city ward or militia district a voting precinct is not established and opened, the registrars shall furnish to the election managers at the voting precinct at the courthouse, at the county seat, the list of registered voters of such ward or militia district, and persons whose names appear on such lists shall be allowed to vote at the voting precinct at the courthouse, at the county seat, under the same rules that would have governed if a voting precinct had been established and opened in said ward or militia district.

SECTION 40. If any person shall offer to vote at the precinct at the courthouse, at the county seat, whose name does not appear on the lists for that ward or militia district, but does appear on the lists for one of the militia districts in which the voting precinct is situated outside of an incorporated town, such person shall be allowed to vote at the courthouse, at the county seat, upon taking the following oath: "I swear, or affirm, that I have not voted elsewhere in this election." The name of such voter shall be kept on a special list by the election managers and checked against the list of his precinct, militia district or ward, to ascertain whether or not he has voted in such election more than once.

SECTION 41. When any portion of a county is changed from one county or district to another, the persons who would have been qualified to vote in the county or district from which taken, at the time of any election, shall vote in the county or district to which they are removed, and if required to swear, the oath may be so qualified as to contain this fact. The name of such voter shall be kept and checked as herein provided in Section 40 of this Act.

SECTION 42. If any person shall change his residence from one militia district to another or from one county to another after qualifying to vote and shall desire to vote in any election in the district or county into which he removes at which he would be qualified to vote, he shall have the right, upon application to the registrars, and satisfactory proof before them that he will be qualified to vote at said election, to have his name placed upon the list of registered voters for the district or county into which he has removed, for said election, with the same rights as others registered for said election, provided necessary proof is in the hands of the registrars ten days before such election and the name of such person shall be stricken from the list on which it formerly appeared, prior to the date of such election.

SECTION 43. When any person desires to vote he may be challenged and required to take, in addition to the oath required to qualify an elector, the following oath in writing: "I do solemnly swear that I am (here insert the name, the same as on the registration list); that I am duly qualified as an elector, and at the time gave my address as (here give the address given on the registration card); that I have for the last six months resided at the following addresses (here give detailed addresses during the last six months with such particularly that the same can be readily verified or disproved; that I have resided at such place under the name of (here insert any name or alias used); and that my mother's maiden name is or was (here insert mother's maiden name)." Such written oath shall be filed with the manager of the election and preserved.

SECTION 44. The managers of the elections at the different precincts shall return the list of registered voters to the clerk of the superior court by which officer said lists shall be kept open for public inspection, and by said officer placed with the foreman of the next grand jury for such action as may be deemed proper by the grand jury. Said list is not to be placed with said clerk until after examination by the board of consolidation.

SECTION 45. Said lists of qualified voters, lists of disqualified persons and registration cards, shall be at all times open to the reasonable inspection of any citizen of the county, but shall not be removed for such inspection from the custody of the official in charge. At the end of each year the registrars shall file, in the office of the ordinary, certified copies of the lists of registered voters prepared for each election.

SECTION 46. All the duties herein required of the registrars and all hearing of evidence upon the qualifications of voters shall be discharged and had in public. However, when several persons have been notified to appear before the registrars at the same time, the registrars, in their discretion may examine each one of them separately and apart from the others.

SECTION 47. For each application to register and qualify taken by the tax collector or tax commissioners, or his deputies acting in the capacity of deputy registrar and for each voter suspended by the same for failure to vote during the two preceding calendar years, said tax collector or tax commissioner shall receive the sum of five cents. For each name on the list of disqualified voters prepared in each year by the tax collector or tax commissioner, ordinary and clerk of the superior court, each of said officers shall receive the sum of one and one-half cents, but their compensation shall not be less than two dollars a day. The compensation of the registrars shall be fixed by the judge of the superior court. The compensation of said officials, the printing and supplying of registration cards, stationery and stamps, the hire of clerical help retained by the registrars and all other necessary expense in connection with the registration of voters shall be paid by the county commissioners, or that person, or those persons, exercising the functions of county commissioners, from the county treasury. All payments hereunder shall be made in the usual manner county bills are paid.

SECTION 48. In any county of this State where the registration records have been destroyed by fire or otherwise, all voters shall register as herein provided, so that there may be a registration list.

SECTION 49. Any person who shall sign his name or his mark to the oath on the registration card as prescribed by law, and who is not in fact qualified as stated in the oath; or who shall sign his name or his mark to the oath on more than one registration card, unless required to register by the registrars; or who shall in a like manner sign any assumed or fictitious name; or who shall aid or abet any other person to sign his name or make his mark to the oath on more than one registration card unless such other person shall have been required to reregister; or who shall aid or abet any other person to sign an assumed or fictitious name to the oath on said registration card; or who shall deposit or aid or abet another to deposit a ballot at any election in any name other than his own, as appears on the list of registered voters as required by law; or who shall vote without having signed the oath on the registration card and otherwise qualifying to vote shall be guilty of a misdemeanor.

SECTION 50. Any registrar, or any deputy registrar who shall permit any person to sign the voter's oath on the registration card, unless such person shall have actually made the oath before him as provided by Section 15 of this Act shall be guilty of a misdemeanor.

SECTION 51. Any registrar, or any deputy registrar, or any other person who shall falsify the registration cards, or any lists taken or made up therefrom as hereinbefore provided shall be punished by confinement in the penitentiary for not less than one nor more than five years and shall be thereafter prohibited from voting or holding any office in this State.

SECTION 52. The registrars shall meet at the courthouse during voting hours of each election day for the purpose of considering the qualification of voters whose names may have been omitted by inadvertence or mistake from the qualified list of voters.

SECTION 53. That whenever the authorities of a municipality located within a county who are charged with the responsibility of holding elections, or the authorities of a board of education who are charged with the responsibility of holding an election, shall request the registrars or board of registrars of the county or the authorities of the county charged with the responsibility for keeping and maintaining the list of qualified voters as defined in this Act, it

shall then be the duty of the registrars or board of registrars, or authorities charged with the responsibility of maintaining the qualified voters' list, to furnish to said municipality or board of education a list of voters, duly certified, who are qualified to vote and who reside within the corporate limits of said municipality or within the limits of the board of education.

SECTION 54. The board of registrars, or the authorities charged with the responsibility of keeping and maintaining said voters' lists shall furnish said list to the municipality or board of education within said county at a price mutually agreed upon between said parties. If such parties are unable to agree upon said compensation the amount of same shall be submitted to arbitration pursuant to Chapter 7-2 of the Code of Georgia of 1933, and the award of said arbitrators shall be binding upon all parties, and the compensation provided by said arbitrators paid.

SECTION 55. The General Assembly declares that the intent and purpose of this Act is to provide for a new and exclusive method of qualifying voters, such revision being necessary in order to make the laws of this State conform to the requirements of the Constitution of Georgia adopted in the year 1945.

SECTION 56. That all Acts and parts of Acts in conflict herewith be, and the same are hereby repealed.

Approved February 25, 1949.

VOTERS' REGISTRATION ACT—AMENDMENTS

No. 591 (Senate Bill No. 168)

An Act to amend an Act to effect a complete revision of all and singular the laws of this State in any way dealing with the subject of registration and qualification of voters by providing for the annulment of all registrations heretofore effected by providing for a permanent registration, etc.; approved February 25, 1949 (Georgia Laws 1949, pages 1204 to 1227, inclusive), by striking the word "special" in line two of Section Two; by striking the figures "1950" in line two of Section Three and inserting in lieu thereof the figures "1952"; by striking the word "special" in line one of Section Five, the words "special election" in line five of Section Five, and the word "special" in line seven of Section Five; to provide for the supplementing and purging of the general election lists of qualified voters of the year 1948; by striking the figures "1952" in line eight of Section Twenty-three and inserting in lieu thereof the figures "1954"; by striking the figures "1952" in line thirty-two of Section Twenty-three and inserting in lieu thereof the figures "1954", and by striking the word "special" in line forty of Section Twenty-three; by adding a comma after the word "April" in line one of Section Twenty-six and inserting after said word the figures and words "1952, and thereafter"; to provide for notice to voter or applicant within thirty days; and for other purposes

Be it enacted by the General Assembly of the State of Georgia, and it is hereby enacted by authority of the same:

SECTION 1. That an Act approved February 25, 1949, and being an Act entitled an Act to effect a complete revision of all and singular the laws of this State in any way dealing with the subject of registration and qualification of voters by providing for the annulment of all registrations heretofore effected by providing for a permanent registration, etc.; (Georgia Laws 1949, pages 1204 to 1227, inclusive) be and the same is hereby amended by striking the word "special" in line two of Section Two so that said section as amended, shall read as follows:

"SECTION 2. That except as hereinafter provided with reference to any election occurring before the first general election list shall have been prepared as provided in this Act, all registration heretofore effected are hereby declared null and void."

SECTION 2. By striking the figures "1950" in line two of Section Three and inserting in lieu thereof the figures "1952", so that said section as amended shall read as follows:

"SECTION 3. The first registration list hereunder shall be prepared in the year 1952, but the process of registration under this Act shall start immediately on its passage and approval and all persons seeking to register and qualify as voters shall be registered and qualified as herein provided."

SECTION 3. By striking the word "special" in line one of Section Five, the words, "special election" in line five of Section Five and the word "special" in line seven of Section Five, and by adding at the end of said section the following: "Those persons on the general election list of qualified voters for the year 1948 and those persons who register under the term of the provisions of this Act shall be entitled to vote in any election prior to the general election of 1952. Provided, however, that it shall be the duty of the registrars to consolidate the lists for any such election and to make certain that no person is listed more than once on such consolidated list;" provided further, that any voter on said 1948 list

may be challenged, in the manner now provided by law, upon any ground now provided by law or upon the ground that such voter is not entitled to register under said Act approved February 25, 1949, as amended. Such challenge shall be heard and determined in the manner provided by law and if such voter is found to be disqualified his name shall be stricken from said 1948 list; so that said section as amended shall read as follows:

"SECTION 5. At any election, held before the first list under the terms of this Act shall have been prepared and filed, the general election list of qualified voters of the year 1948, in conjunction with a supplemental list prepared in accordance with the provisions hereafter set forth shall be used. In the same manner the last general election list of qualified voters shall be used for any election occurring after said list is prepared but before the preparation of a new general election list. Nothing in this section shall be construed so as to prevent the registrars from purging said old list and the supplemental list and remove therefrom those persons not entitled to vote. Those persons on the general election list of qualified voters for the year 1948 and those persons who register under the terms of the provisions of this Act shall be entitled to vote in any election prior to the general election of 1952. Provided, however, that it shall be the duty of the registrars to consolidate the lists for any such election and to make certain that no person is listed more than once on such consolidated list." Provided, that unless authorized by the governing authority of the county, the registrar and other officers employed under this Act shall not work more than two days each month until January 1, 1952, and until such date shall be entitled to compensation only for two days each month.

SECTION 4. By striking the figures "1952" in line eight of Section Twenty-three and inserting in lieu thereof the figures "1954", by striking the figures "1952" in line thirty-two of Section Twenty-three and inserting in lieu thereof the figures "1954", and striking the world "special" in line forty of Section Twenty-three, so that said section as amended shall read as follows:

"SECTION 23. The electors who have qualified shall not thereafter be required to register or further qualify, except as may be required by the board of registrars. No person shall remain a qualified voter who does not vote in at least one election within a two-year period unless he shall specifically request continuation of his registration in the manner hereinafter provided.

Within sixty (60) days after the first day of January in each year, beginning on January 1, 1954, the tax collector or tax commissioner, as the case may be, shall revise and correct the registration records in the following manner:

He shall examine the registration cards and shall suspend the registration of all electors who have not voted in any general, special, or primary election, State, county, or municipal within the two years next preceding said first day of January, except as may be forbidden by Article 2, Section 1, Paragraph 5 of the Constitution of the State of Georgia; provided, however, that on or before March 1st of said year he shall mail to each elector, at the last address furnished by the registrant, a notice substantially as follows:

"You are hereby notified that, according to State law, your registration as a qualified voter will be cancelled for having failed to vote within the past two years, unless on or before April 1st of the current year you continue your registration by signing the statement below and returning it to this office, or by applying in person.

Application for continuation of registration:

"I hereby certify that I reside at the address given below and apply for continuation of my registration as a voter.

Signature of elector_____
Permanent residence address_____
Date _____

Effective April 1, 1954, the tax collector or the tax commissioner, as the case may be, shall cancel the registration of all electors thus notified who have not applied for continuance, and the names of all such electors shall be wholly removed from the list of qualified electors. Any elector whose registration has been thus cancelled may reregister in the manner provided for original registration. No person shall remain a qualified voter longer than he shall retain the qualification under which he registered. As the 1948 voters' list is preserved for elections which may take place prior to the preparation and filing of the first general election list hereunder, the tax collector shall until such time conform to the provisions of Section 34-115 of the 1933 Code as amended by Act approved February 5, 1945, and more fully appearing on page 133, etc., of the Acts of

the General Assembly of 1945, but the time for mailing the notice provided for in said Code section is hereby extended for an additional fifteen days.

SECTION 5. By adding a comma after the word "April" in line one of Section Twenty-six and inserting after said word the figures and words "1952, and thereafter"; so that said section, as amended, will read as follows:

"SECTION 26. The registrars shall on the 20th day of April 1952, and thereafter in each year in which a general election is to be held, or on the day thereafter if the 20th day of April occurs on a Sunday, begin the work of perfecting a true and correct list of the qualified voters of their county. They shall place on said list only those persons they have found to be prima facie qualified to vote under the terms of this Act and those persons whose applications were pending on said date and whom they shall subsequently find to be prima facie qualified to vote. In preparing said list they shall examine the list of disqualified persons furnished them by the tax collector or tax commissioner, the ordinary, and the clerk of the superior court, and if any applicant's name is found thereon they shall not place his name on the voter's list. If the information comes to them after the preparation and filing of the list, they shall call upon him to show cause why it should not be removed from the list; provided further, that any voter on said 1948 list may be challenged, in the manner now provided by law, upon any ground now provided by law or upon the ground that such voter is not entitled to register under said Act approved February 25, 1949, as amended. Such challenge shall be heard and determined in the manner provided by law, and if such voter is found to be disqualified his name shall be stricken from said 1948 list.

SECTION 6. It shall be the duty of the county registrars of each county appointed pursuant to said Act of February 25, 1949, as amended, to purge the said 1948 lists of voters, as provided by law, of all persons who have become disqualified since the certification of said 1948 lists or for any reason are now disqualified or may be disqualified before the certification of said lists. Any person denied registration under the new registration law of 1949 shall not be eligible to vote in any election in this State, and all lists shall be so purged.

SECTION 7. I any section, sentence, subdivision, or clause of this Act is for any reason held invalid or to be unconstitutional, such decision shall not affect the validity of the remaining portion of this Act.

SECTION 8. The Voter's Registration Law of 1949, Acts of 1949, page 1204, is hereby amended by adding at the end of Section 6 of said Act a new sentence to read as follows: "The compensation to be paid to the registrars and all other officers and employees appointed and employed under this Act shall be fixed by the commissioners of roads and revenues of the county"; and by striking Section 47 of said Act in its entirety.

SECTION 9. In all cases arising under this Act where the applicant or the voter as the case may be, is required to be served with a notice of a hearing unless otherwise provided, said notice shall specify a day not less than one, nor more than thirty days after date of the notice.

SECTION 10. That all laws and parts of laws in conflict with this Act, be and the same are hereby repealed.

Approved February 8, 1950.

VOTERS' REGISTRATION ACT AMENDED

No. 523 (Senate bill No. 11)

An Act to amend an Act approved February 25, 1949 (Ga. L. 1949, p. 1204), which Act is known as the "Voters' Registration Act" and which Act effected a complete revision of the laws of this State relating to the registration and qualification of voters, as amended by an Act approved February 8,1950 (Ga. L. 1950, p. 126), so as to provide that those persons who were registered and qualified to vote in the 1948 general election or the 1950 general election or both shall not be required to re-register under the terms of said Act unless such persons shall have become or becomes disqualified to vote; to repeal conflicting laws; and for other purposes

Be it enacted by the General Assembly of Georgia, and it is hereby enacted by authority of the same:

SECTION 1. That an Act approved February 25, 1949 (Ga. L. 1949, p. 1204), which Act is known as the "Voters' Registration Act" and which Act effected a complete revisions of the laws of this State relating to the registration and qualification of voters, as amended by an Act approved February 8, 1950 (Ga. L. 1950, p. 126), is hereby amended by changing the "." at the end of Section 1 to

a "," and adding the words "except as provided in Section 2 of this Act.", so that Section 1 when so amended shall read as follows:

"SECTION 1. That effective from the date of the approval of this Act no person shall be permitted to vote in any election in this State for Presidential electors, for members of Congress, for United States Senator, for Governor, Lieutenant Governor, for State-house officers, for members of the General Assembly, for county officers, county commissioners, justices of the peace, for constables, for members of county boards of education, where chosen by the people, nor in any other popular election to fill any other State or county office now existing, or hereafter created, nor in any State or county election for any purpose whatever, unless such person shall have been registered and qualified as hereinafter provided, except as provided in Section 2 of this Act."

SECTION 2. That said Act, as amended, is further amended by striking in its entirety Section 2 thereof, as amended, which reads as follows: "Section 2. That except as hereinafter provided with reference to any election occurring before the first general election list shall have prepared as provided in this Act, all registrations heretofore effected are hereby declared null and void.", and inserting a new section to be numbered Section 2 and which shall read as follows:

"SECTION 2. That notwithstanding any other provisions of this Act, any person who was registered and qualified to vote in the 1948 general election or the 1950 general election or both shall not be required to re-register under the terms of this Act unless such person shall have become or becomes disqualified to vote, by reason of having been purged from the list of qualified voters or for any other reason whatsoever, in which event, such person shall, in order to become qualified to vote, re-register under the terms of this Act."

SECTION 3. That said Act, as amended, is further amended by striking from Section 26 thereof, as amended, after the word "vote" and before the word "whom" the words, "under the terms of this Act and those persons whose applications were pending on said date", and inserting in lieu thereof the words, "and those persons", and by striking the following language, "provided further that any voter on said list may be challenged, in the manner now provided by law, upon any ground now provided by law or upon the ground that such voter is not entitled to register under said Act approved February 25, 1949, as amended. Such challenge shall be heard and determined in the manner provided by law and if such voter is found to be disqualified his name shall be stricken from said 1948 list," from the end of said election, so that said Section 26 when so amended shall read as follows:

"SECTION 26. The registrars shall on the 20th day of April 1952, and thereafter in each year in which a general election is to be held, or on the day thereafter if the 20th day of April occurs on a Sunday, begin the work of perfecting a true and correct list of the qualified voters of their county. They shall place on said list only those persons they have found to be prima facie qualified to vote and those persons whom they shall subsequently find to be prima facie qualified to vote. In preparing said list they shall examine the list of disqualified persons furnished them by the tax collector or tax commissioner, the ordinary and the clerk of the superior court, and if any applicant's name is found thereon they shall not place his name on the voter's list. If the information comes to them after the preparation and filing of the list they shall call upon him to show cause why it should not be removed from the list."

SECTION 4. That the said amendatory Act of 1950 is hereby amended by striking from Section VI thereof the last sentence which reads as follows: "Any person denied registration under the new Registration Law of 1949 shall not be eligible to vote in any election in this State, and all lists shall be so purged.", so that said Section VI when so amended shall read as follows:

"SECTION VI. It shall be the duty of the county registrars of each county appointed pursuant to said Act of February 25, 1949, as amended, to purge the said 1948 lists of voters, as provided by law, of all persons who have become disqualified since the certification of said 1948 lists or for any reason are now disqualified or may be disqualified before the certification of said lists."

SECTION 5. That all laws and parts of laws in conflict with the provisions of this Act are hereby repealed.

Approved February 4, 1952.

VOTER'S REGISTRATION ACT AMENDED

No. 167 (Senate Bill No. 20)

An Act to amend an Act known as the "Voters Registration Act" and shall execute a complete revision of all the laws of this State relating to the subject of registration and qualification of voters, and provided for county registrars, approved February 25, 1949 (Ga. Laws 1949, p. 1204), as amended by an Act approved February 8, 1950 (Ga. Laws 1950, p. 126), and an Act approved February 4, 1952 (Ga. Laws 1952, p. 12), so as to provide that a county registrar shall not be eligible to offer as a candidate for any State or county office in any primary, special or general election, while holding said position; to provide that a county registrar must resign as such prior to the time for holding any election in which he desires to offer as a candidate for public office; to provide that the failure to resign as required by this Act shall make a county registrar ineligible to hold any public office; to repeal conflicting laws; and for other purposes

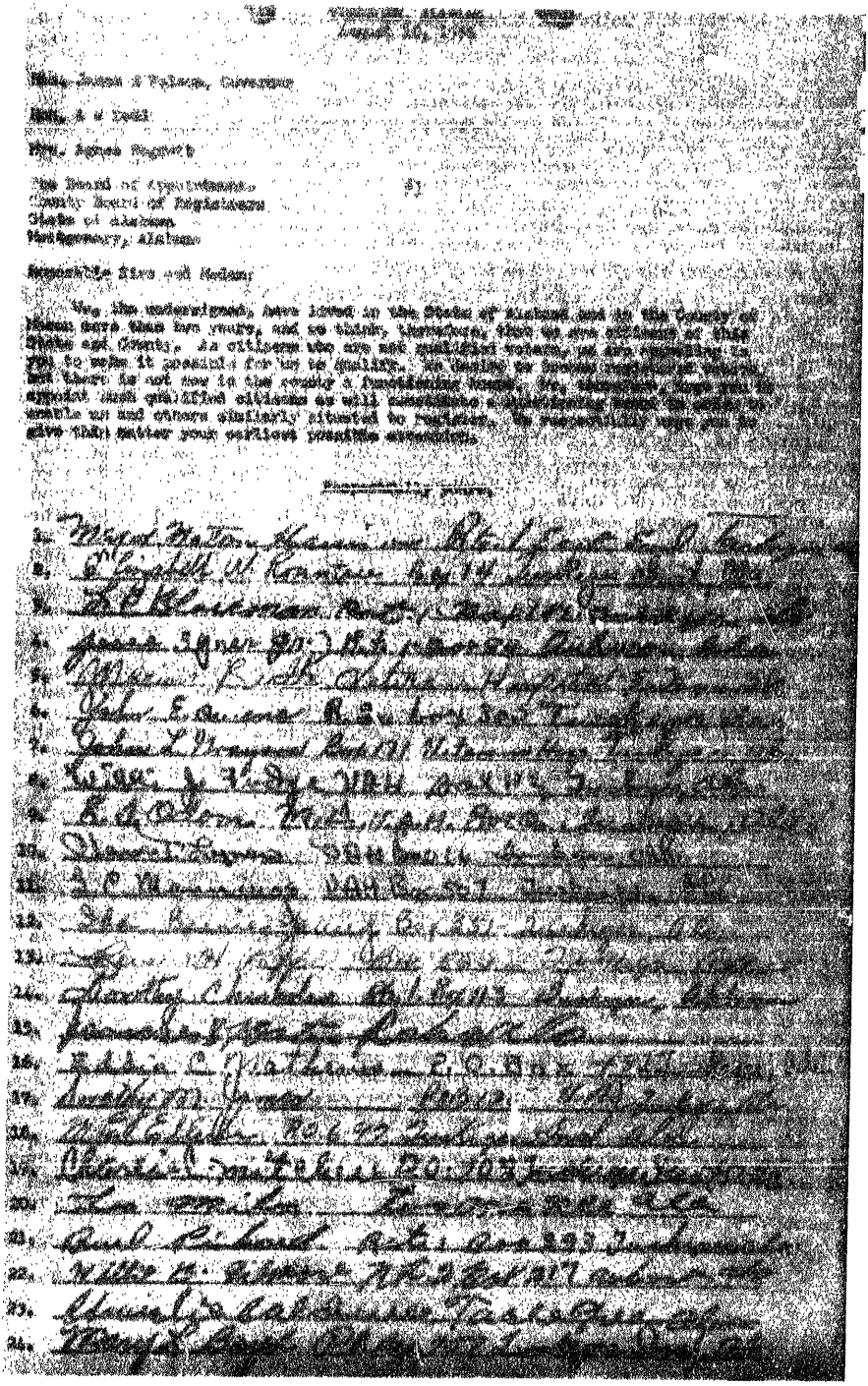
Be it enacted by the General Assembly of Georgia:

SECTION 1. An Act known as the "Voters Registration Act," which executed a complete revision of the laws of this State relating to the registration and qualification of voters and provided for county registrars, approved February 25, 1949 (Ga. Laws 1949, p. 1204), as amended by an Act approved February 8, 1950 (Ga. Laws 1950, p. 126) and an Act approved February 4, 1952 (Ga. Laws 1952, p. 12) is hereby amended by adding a new section to be numbered Section 6A to read:

"SECTION 6A. A county registrar shall not be eligible to offer as a candidate for any State, county or national office in any primary, special or general election while holding said position. Any person serving as a county registrar must resign that position sixty (60) days or more prior to the time for holding any election in which such person desires to offer as a candidate for public office, and the failure to resign as required by this Section shall make a county registrar ineligible to serve as an elected public official. The provisions of this section shall not apply to special elections called within the sixty (60) day period."

SECTION 2. All laws and parts of laws in conflict with this Act are hereby repealed.

Approved March 3, 1955.



Montgomery, Alabama
August 24, 1956

Hon. James A Folsom, Governor

Hon. A J Gold

Hon. James Hagerty

The Board of Superintendents
County Board of Registrars
State of Alabama
Montgomery, Alabama

Honorable Sirs and Madam:

We, the undersigned, have lived in the State of Alabama and in the County of Lamar more than two years, and we think, therefore, that we are citizens of this State and County. As citizens who are and qualified voters, we are requesting you to make it possible for us to register. We desire to become registered voters, but there is not now in the county a functioning board. We, therefore, hope you to appoint such qualified citizens as will constitute a functioning board in order to enable us and others similarly situated to register. We respectfully urge you to give this matter your serious immediate attention.

Respectfully yours,

1. Miguel Walton Lamar county Rt 1 Beaverton Ala
2. Elizabeth W. Hamilton Lamar Co. Rt 1 Beaverton Ala
3. E B Blackman Rt 1 Beaverton Ala
4. James Tyner Rt 1 Beaverton Ala
5. [illegible] Rt 1 Beaverton Ala
6. John E. [illegible] Rt 1 Box 201 Beaverton Ala
7. Julius L Thompson Rt 1 Vernon Ala
8. [illegible] Rt 1 Box 113 Beaverton Ala
9. [illegible] Rt 1 Box 113 Beaverton Ala
10. Thomas Rogers Rt 1 Box 111 Beaverton Ala
11. J C Mangum Rt 1 Box 201 Beaverton Ala
12. [illegible] Rt 1 Box 201 Beaverton Ala
13. [illegible] Rt 1 Box 201 Beaverton Ala
14. Hartley Chatham Rt 1 Box 113 Beaverton Ala
15. [illegible] Rt 1 Box 201 Beaverton Ala
16. Eddie C. Watkins R.F.D. No 1 Box 201 Beaverton Ala
17. [illegible] Rt 1 Box 201 Beaverton Ala
18. [illegible] Rt 1 Box 201 Beaverton Ala
19. [illegible] Rt 1 Box 201 Beaverton Ala
20. [illegible] Rt 1 Box 201 Beaverton Ala
21. [illegible] Rt 1 Box 201 Beaverton Ala
22. Willie M. Hilton Rt 1 Box 201 Beaverton Ala
23. [illegible] Rt 1 Box 201 Beaverton Ala
24. [illegible] Rt 1 Box 201 Beaverton Ala

[illegible], Alabama
August [illegible], 195[illegible]

Hon. James E. Folsom, Governor

Hon. A. W. [illegible]

Mrs. Agnes Baggett

[illegible]

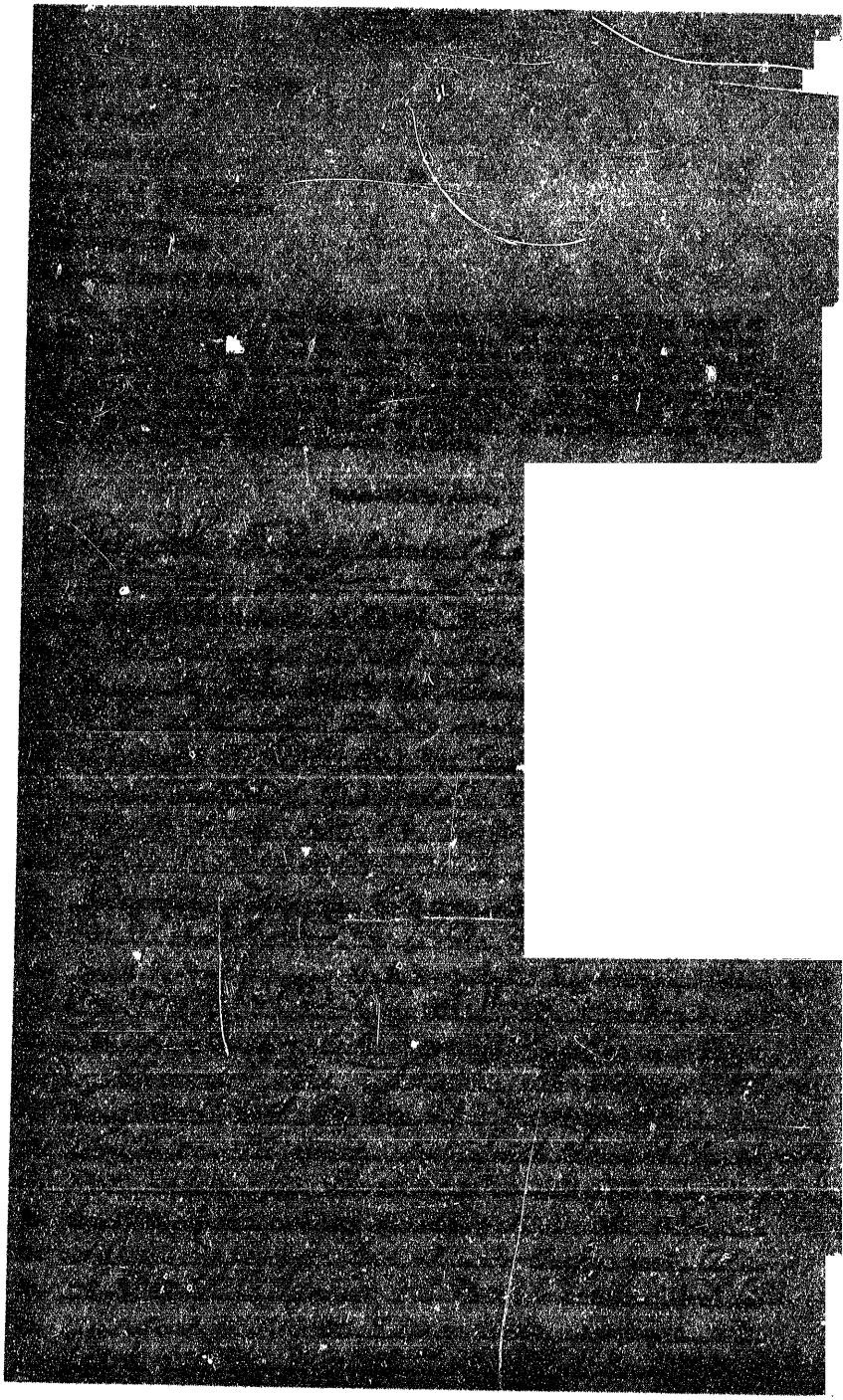
The Board of Appointments
County Board of Registrars
State of Alabama
Montgomery, Alabama

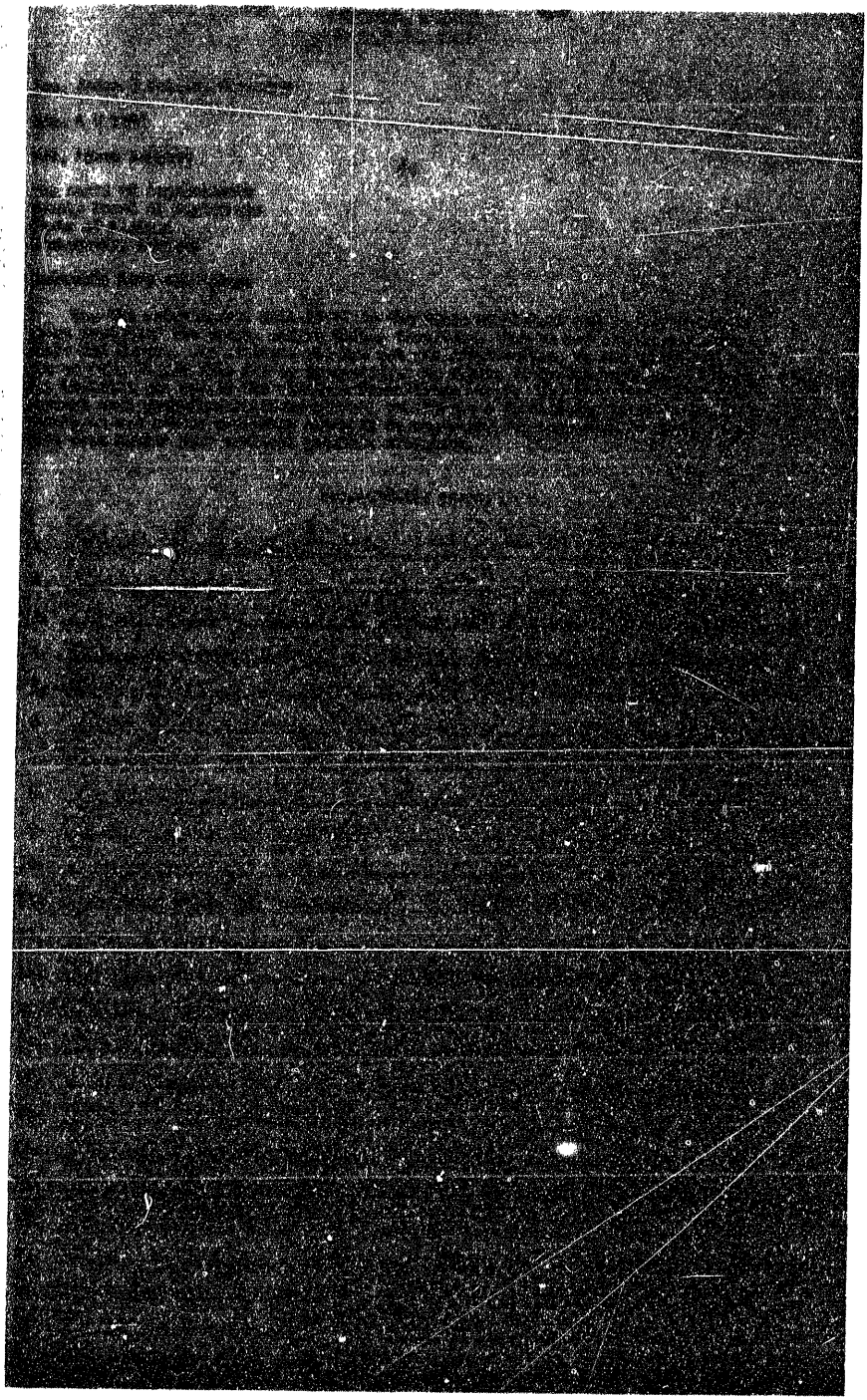
Honorable Sirs and Madam:

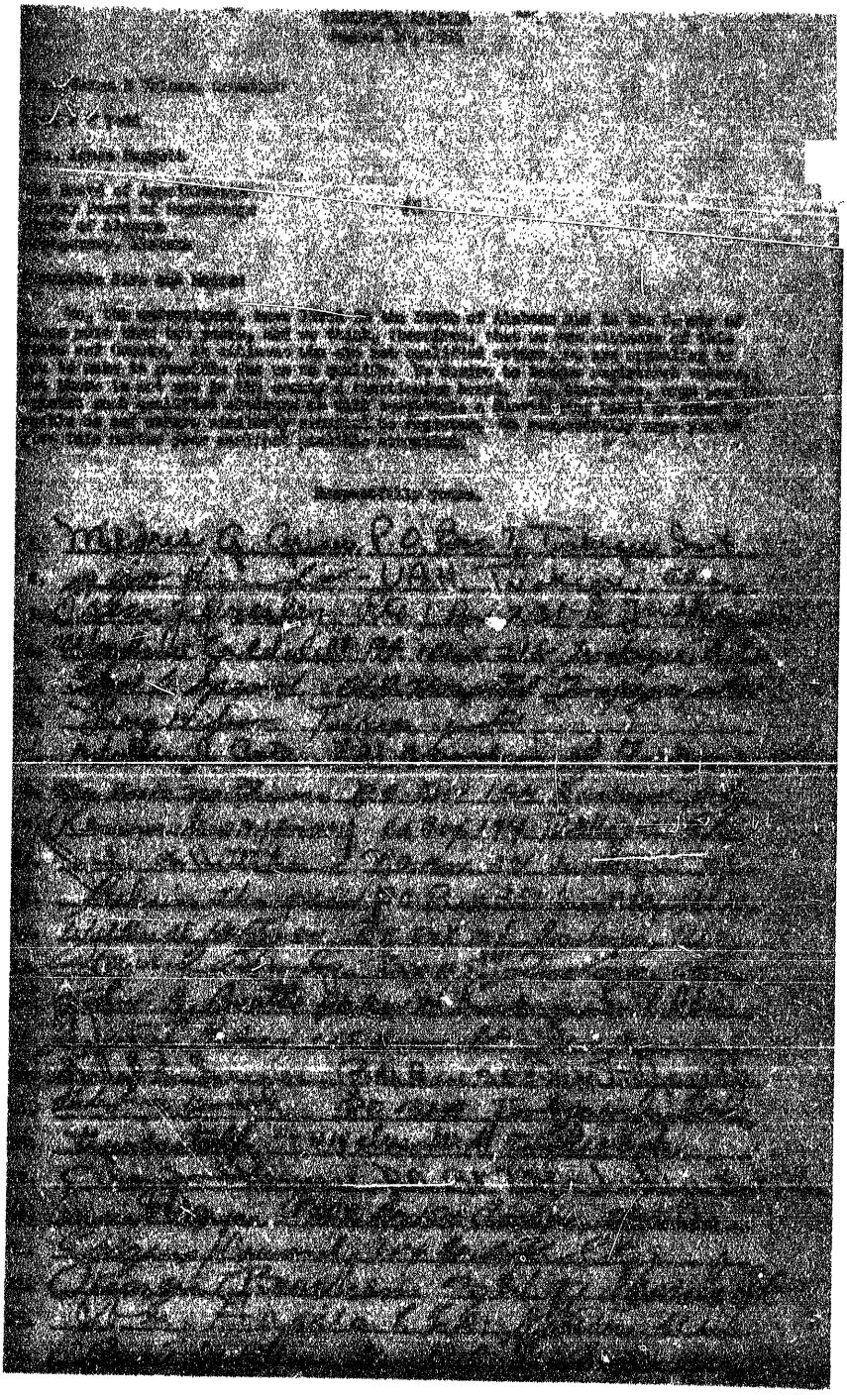
We, the undersigned, have lived in the State of Alabama and in the County of [illegible] more than two years, and we think, therefore, that we are citizens of this State and County. [illegible] possible for us to [illegible] appoint such qualified citizens [illegible] us and others similarly situated [illegible] give this matter your earliest possible attention.

Respectfully yours,

[illegible]







TUSKEGEE, ALABAMA
August 10, 1958

Hon. James E Folsom, Governor

Hon. A M Todd

Mrs. Agnes Baggett

The Board of Appointments
County Board of Registrars
State of Alabama
Montgomery, Alabama

Honorable Sirs and Madam:

We, the undersign..., have lived in the State of Alabama and in the County of Macon more than two years, and we think, therefore, that we are citizens of this State and County. As citizens who are not qualified voters, we are appealing to you to make it possible for us to qualify. We desire to become registered voters, but there is not one in the county a functioning board. We, therefore, urge you to appoint such qualified citizens as will constitute a functioning board in order to enable us and others similarly situated to register. We respectfully urge you to give this matter your earliest possible attention.

Respectfully yours,

1. [illegible]
2. [illegible]
3. [illegible]
4. [illegible]
5. [illegible]
6. [illegible]
7. [illegible]
8. [illegible]
9. [illegible]
10. [illegible]
11. [illegible]
12. [illegible]
13. [illegible]
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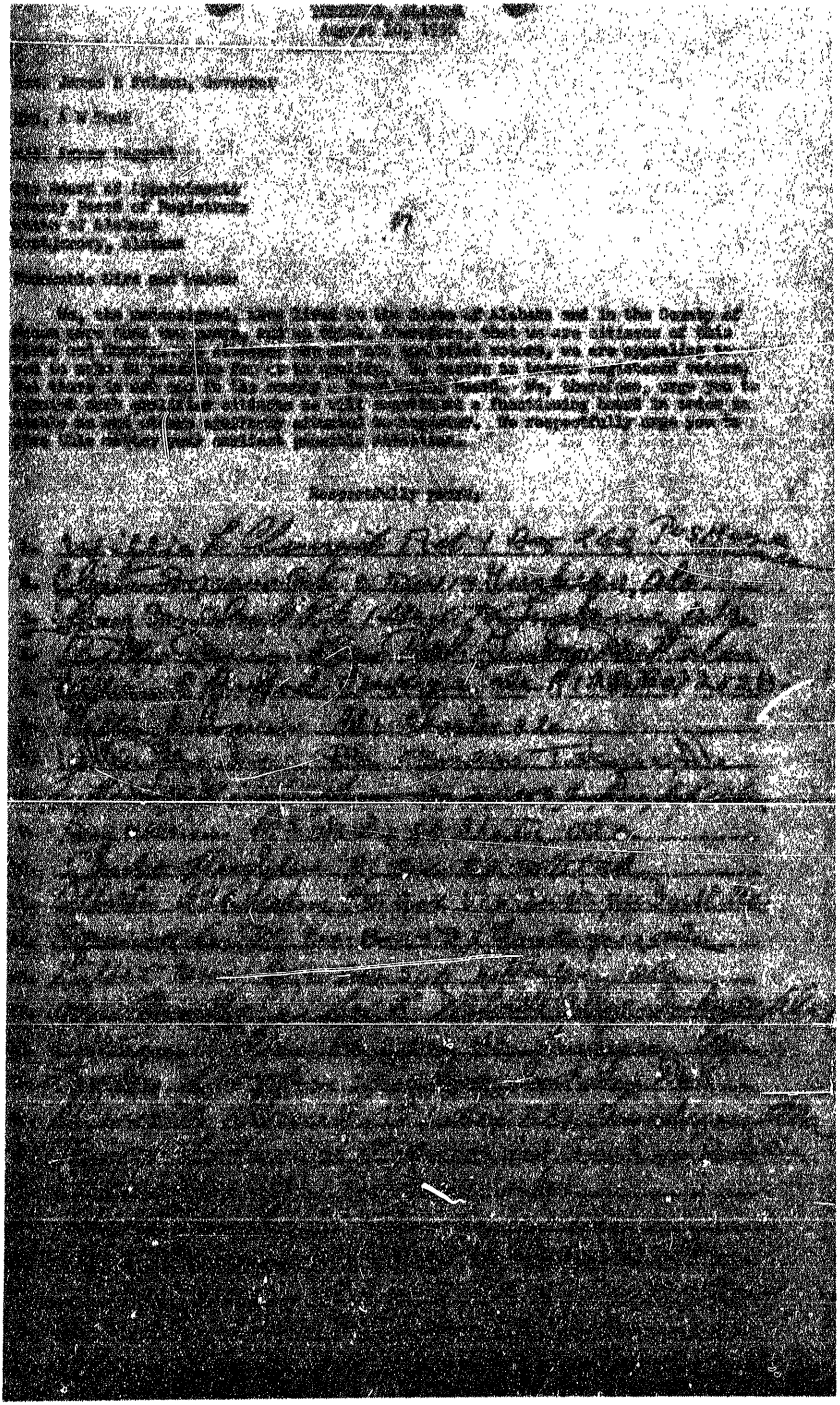

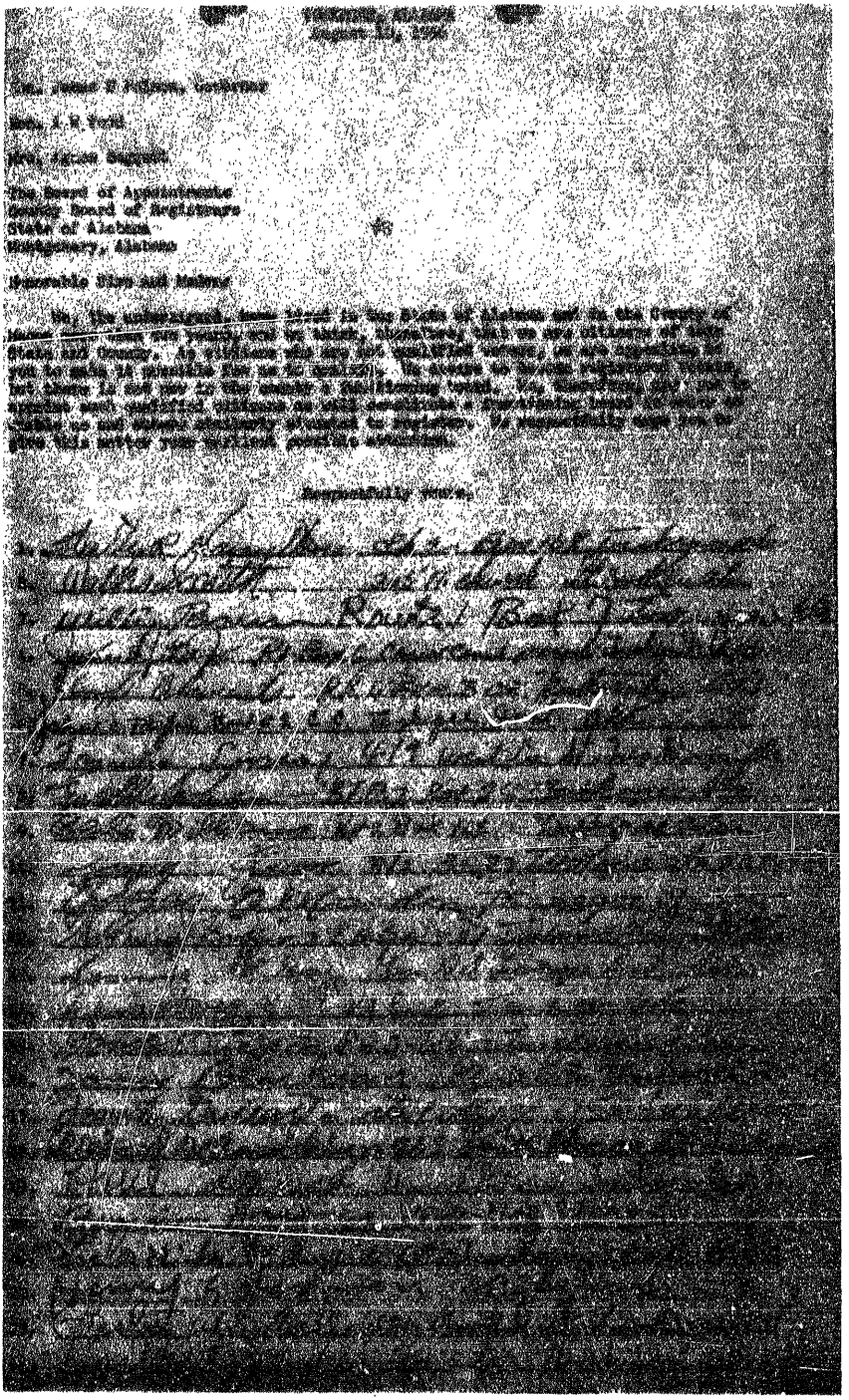

Tuskegee, Alabama
August 13, 1958

Hon. James E. Folsom, Governor

Hon. A. B. Patt

Hon. Jerome Dempsie

The Board of Administrative
County Board of Registrars
State of Alabama
Montgomery, Alabama

Honorable Sirs and Madams

We, the undersigned, have lived in the State of Alabama and in the County of Macon ____ years, each respectively, and by which, signifying that we are citizens of said State and County. We citizens who are qualified voters, are not registered to vote by which is possible for us to register. We attempt to register ____ times, but failed to get new to the county a qualifying voter. We, therefore, ask that we appoint good qualified citizens as said candidates a registrar board to serve as ____ and ____ secretary of board to register. We respectfully urge you to give this matter your earliest possible attention.

Respectfully yours,

1. [illegible]
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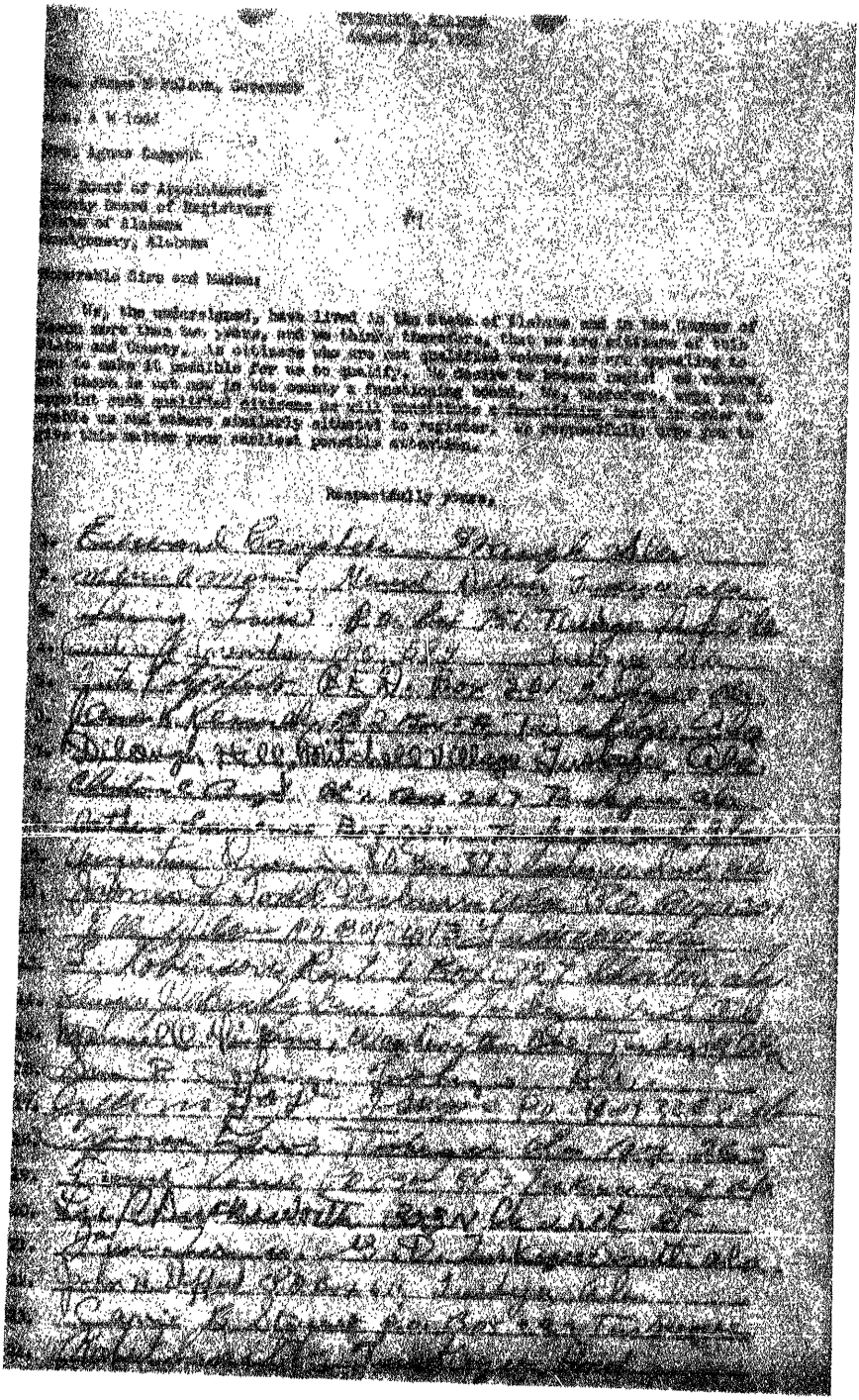

Montgomery, Alabama
August 26, 1957

Hon. James D. Kilgore, Governor

Hon. A. M. Todd

Hon. Agnes Baggett

The Board of Appointments
County Board of Registrars
State of Alabama
Montgomery, Alabama

Gentlemen

We, the undersigned, have lived in the State of Alabama and in the County of Montgomery more than one year, and we think, therefore, that we are citizens of both State and County. As citizens who are qualified voters, we are appealing to you to make it possible for us to qualify. We consider the present racial situation, that there is not now in the county a functioning board, to be unfortunate, and ask you to appoint such qualified citizens as will constitute a functioning board in order to enable us and others similarly situated to register. We respectfully urge you to give this matter your earliest possible consideration.

Respectfully yours,

1. Edward George Lee Pleasant Hill
2. Mamie Bell Lee Memorial Methodist, Trustee or Pastor
3. Johnny Louis Lee R.F.D. Box 241 Mt. Nathan Church Trustee
4. Jessie L. Lee R.F.D. Box 241 Mt. Nathan Church Trustee
5. Lucy L. Gilbert R.F.D. Box 241 Montgomery, Ala.
6. Edward L. Gilbert R.F.D. Box 241 Montgomery, Ala.
7. Dillard Hill Mt. Lawn Village Trustee Calvary
8. Charles E. Bell R.F.D. Box 241 Montgomery, Ala.
9. Ruth Caroline Bell R.F.D. Box 241 Montgomery, Ala.
10. Thomas Lyons R.F.D. Box 241 Lucy Lee Church Trustee
11. Johnnie Mae Lyons R.F.D. Box 241 Mt. Nathan Church
12. Willie Hill R.F.D. Box 241 Mt. Nathan Church Trustee
13. Lucy Mae Hill R.F.D. Box 241 Mt. Nathan Church
14. Robert Lee Bell R.F.D. Box 241 Mt. Nathan Church
15. Lucy Mae Bell R.F.D. Box 241 Mt. Nathan Church
16. Willie Mae Bell R.F.D. Box 241 Mt. Nathan Church
17. Willie Bell R.F.D. Box 241 Mt. Nathan Church
18. Willie Mae Bell R.F.D. Box 241 Mt. Nathan Church
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22. Willie Mae Bell R.F.D. Box 241 Mt. Nathan Church
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24. Willie Mae Bell R.F.D. Box 241 Mt. Nathan Church
25. Willie Bell R.F.D. Box 241 Mt. Nathan Church
26. Willie Mae Bell R.F.D. Box 241 Mt. Nathan Church
27. Willie Bell R.F.D. Box 241 Mt. Nathan Church
28. Willie Mae Bell R.F.D. Box 241 Mt. Nathan Church
29. Willie Bell R.F.D. Box 241 Mt. Nathan Church
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31. Willie Bell R.F.D. Box 241 Mt. Nathan Church
32. Willie Mae Bell R.F.D. Box 241 Mt. Nathan Church
33. Willie Bell R.F.D. Box 241 Mt. Nathan Church
34. Willie Mae Bell R.F.D. Box 241 Mt. Nathan Church
35. Willie Bell R.F.D. Box 241 Mt. Nathan Church
36. Willie Mae Bell R.F.D. Box 241 Mt. Nathan Church
37. Willie Bell R.F.D. Box 241 Mt. Nathan Church
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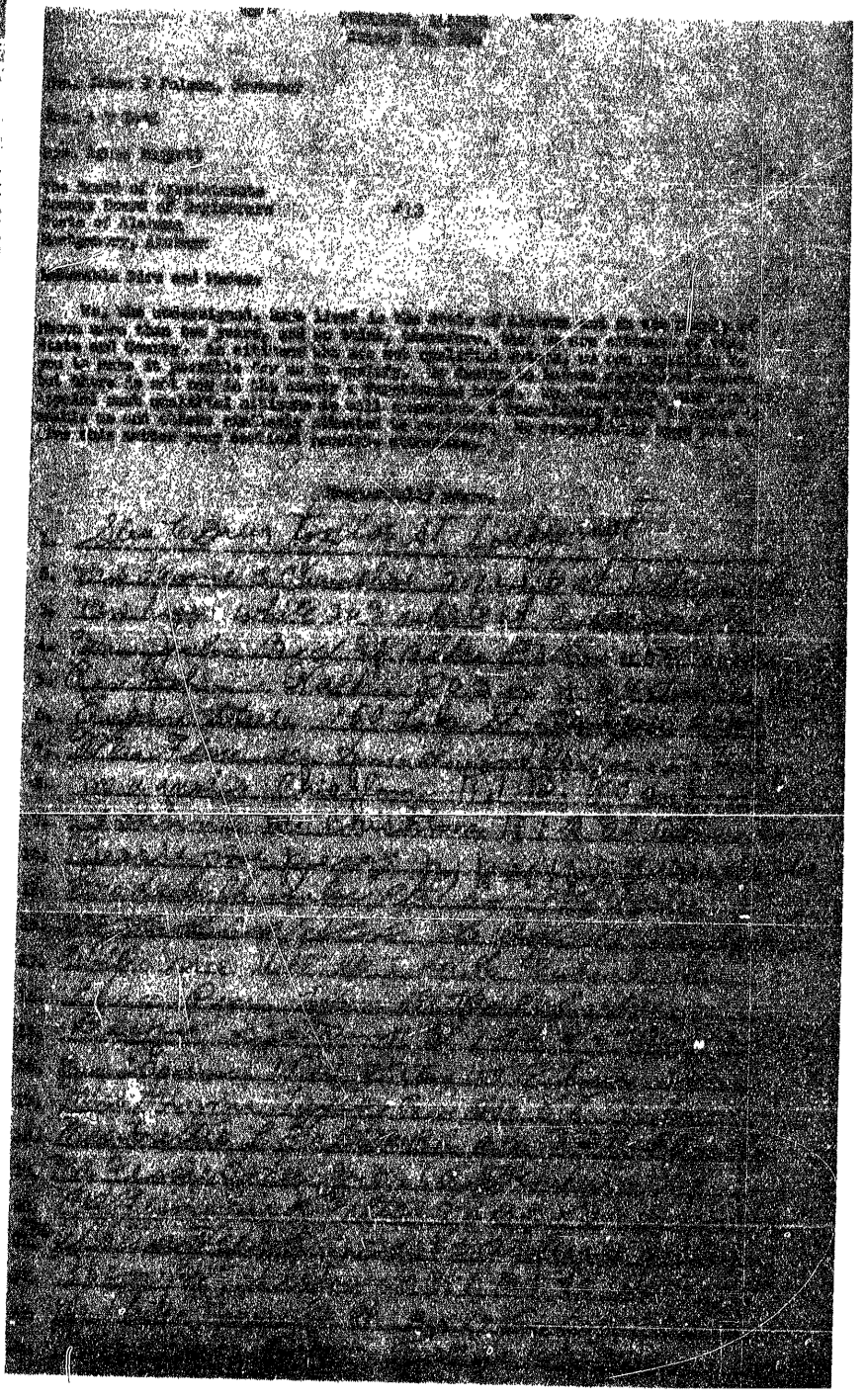
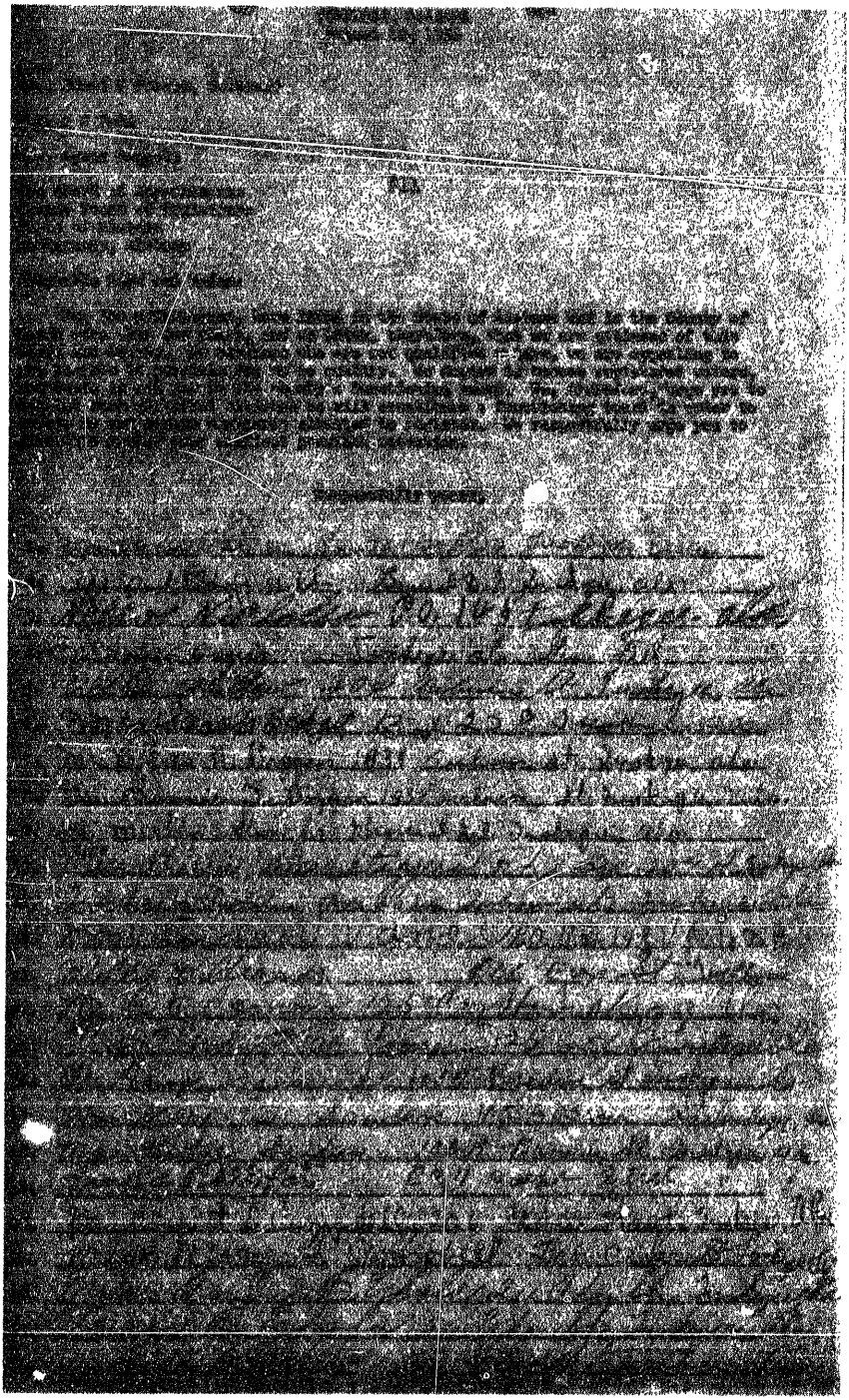
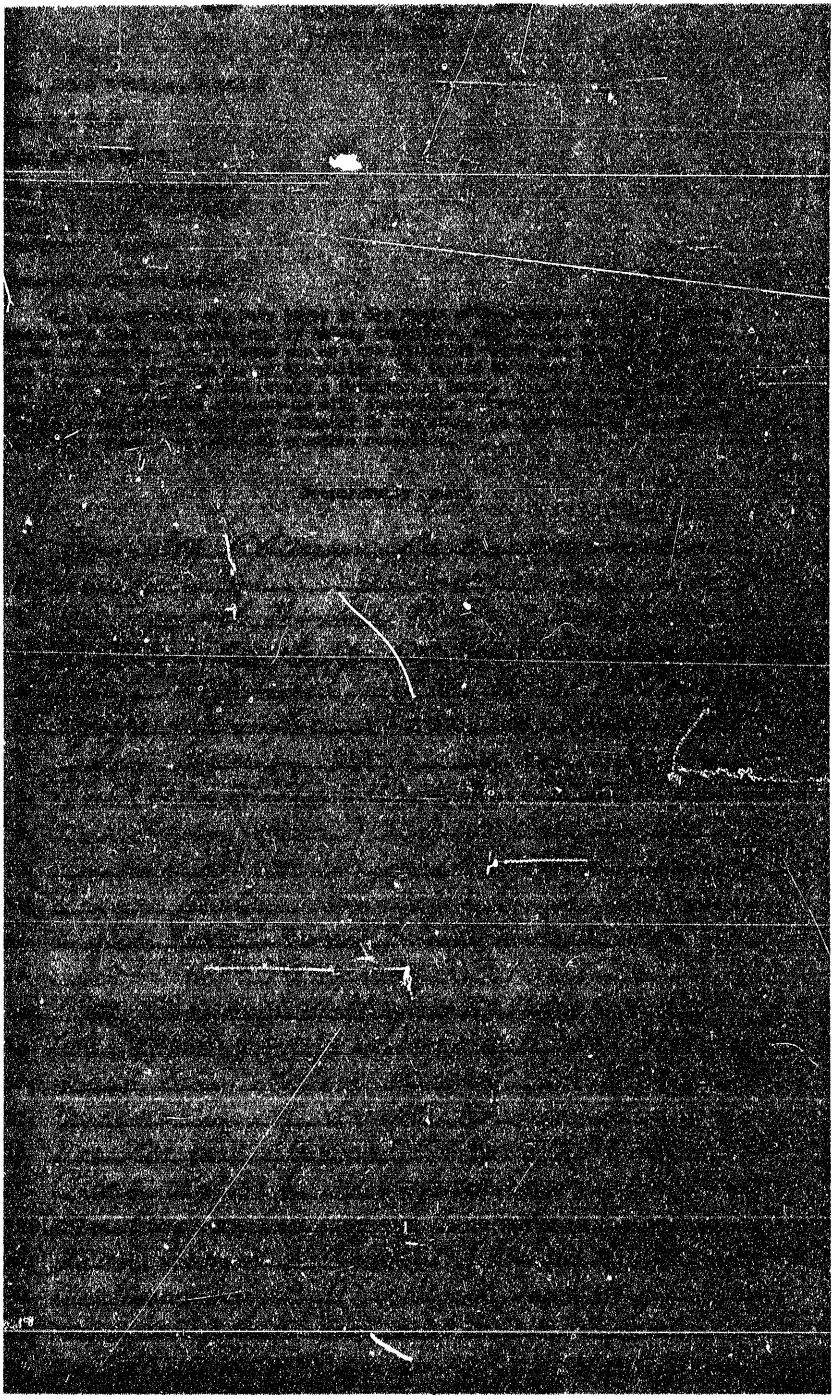
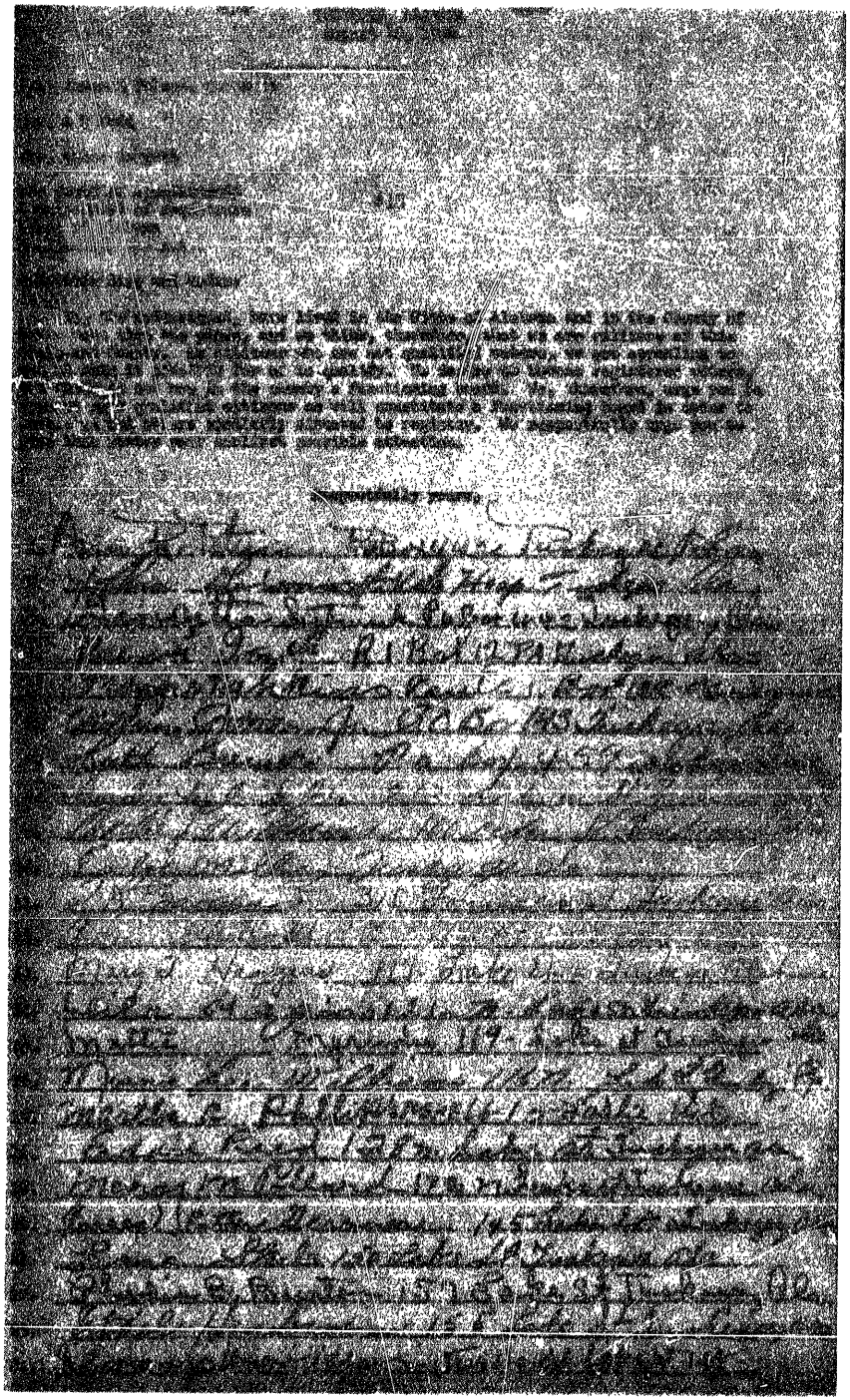
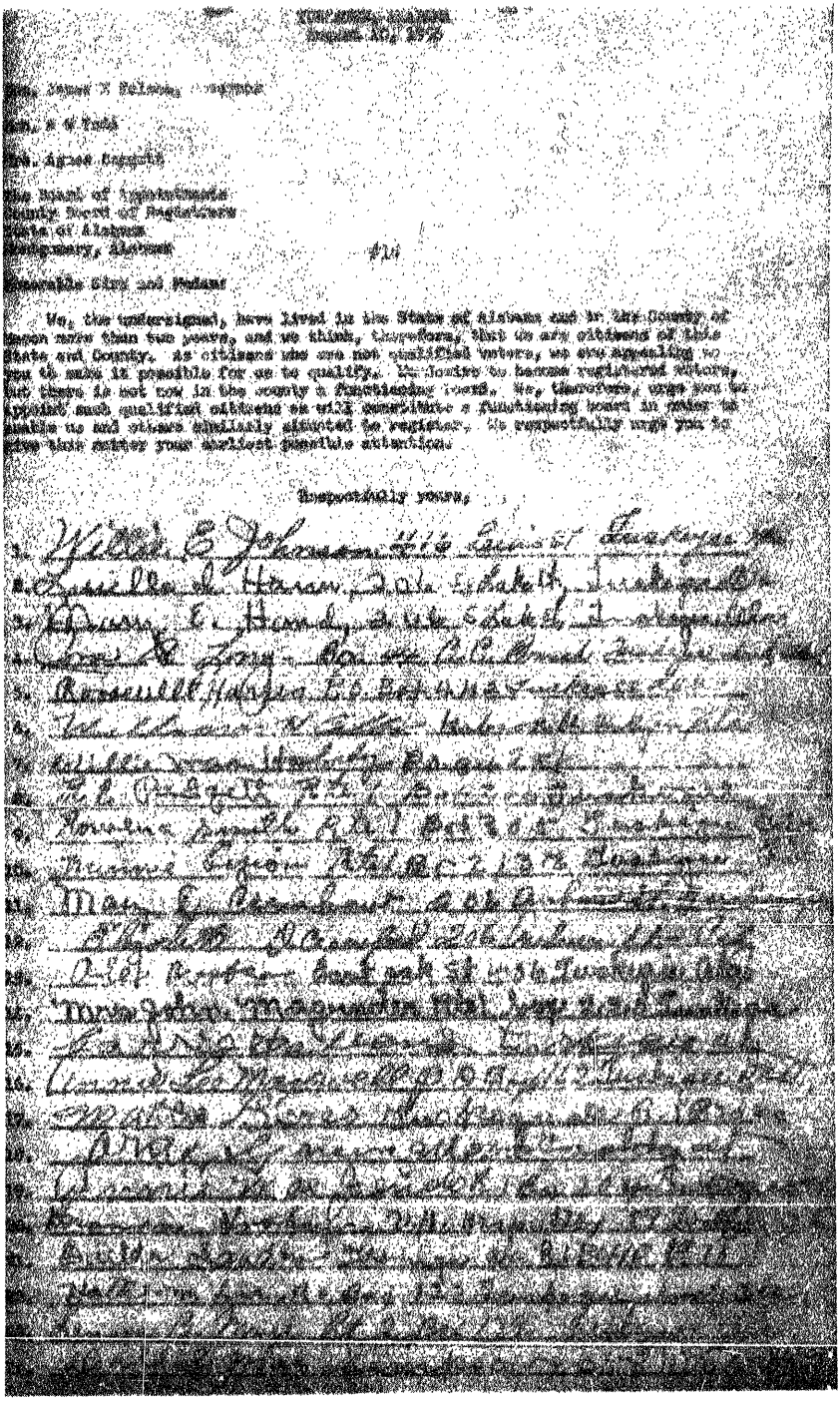
40. Willie Mae Bell R.F.D. Box 241 Mt. Nathan Church











August 26, 1957

Mrs. Agnes Baggett

Mrs. A. W. Dubois

Miss Agnes Baggett

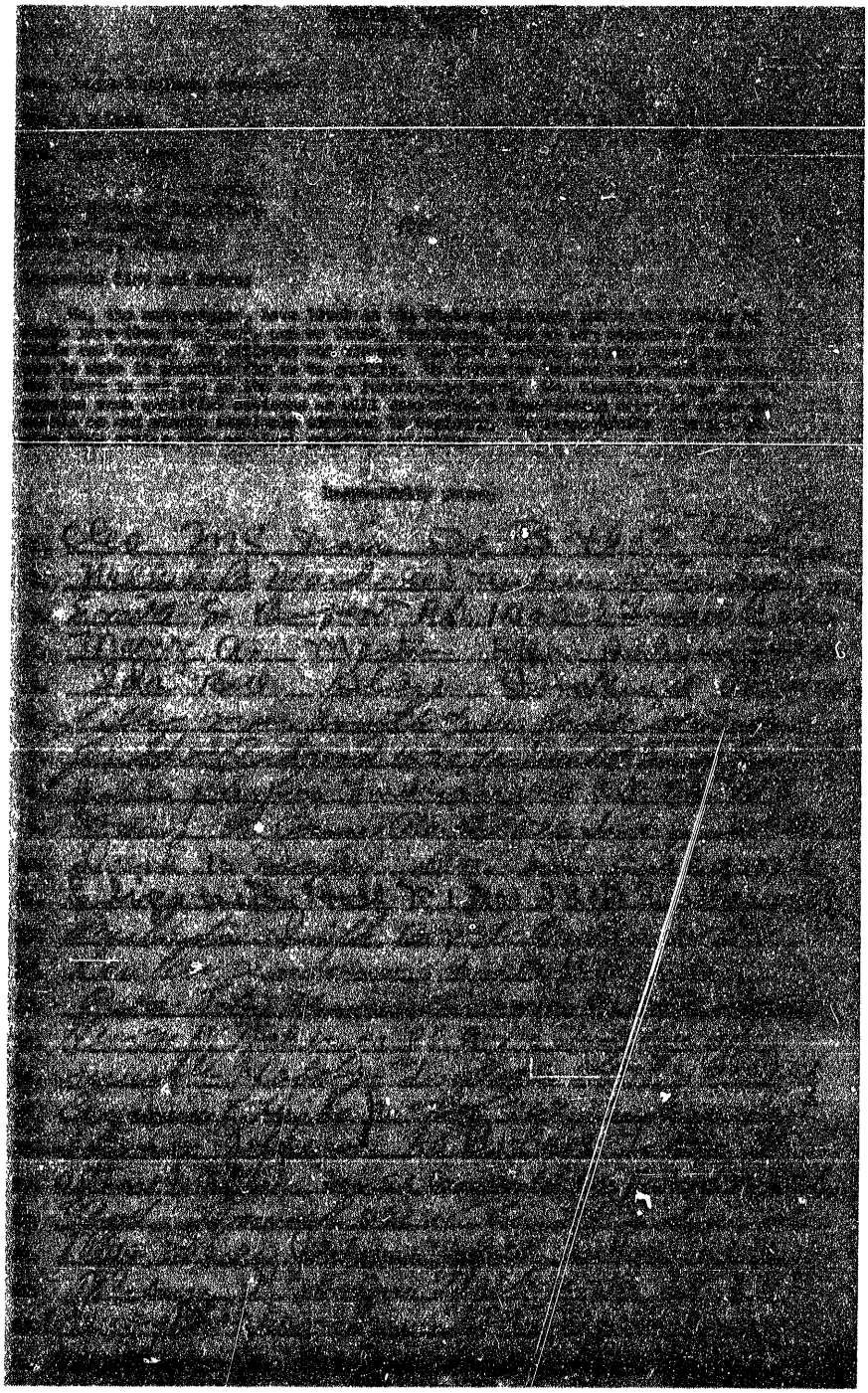
The Board of Superintendents
County Board of Registrars
State of Alabama
Montgomery, Alabama

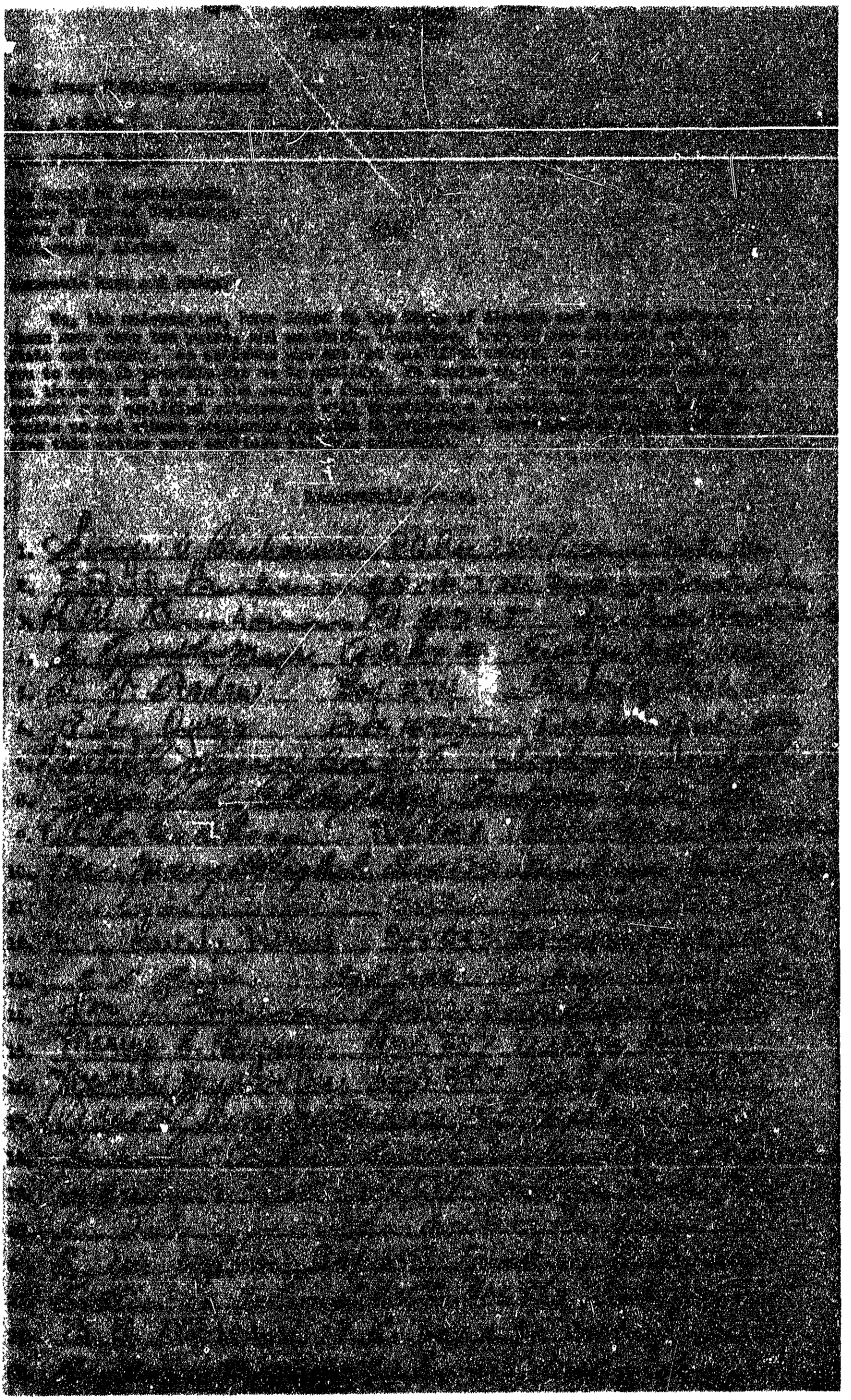
Gentlemen Sirs and Madams:

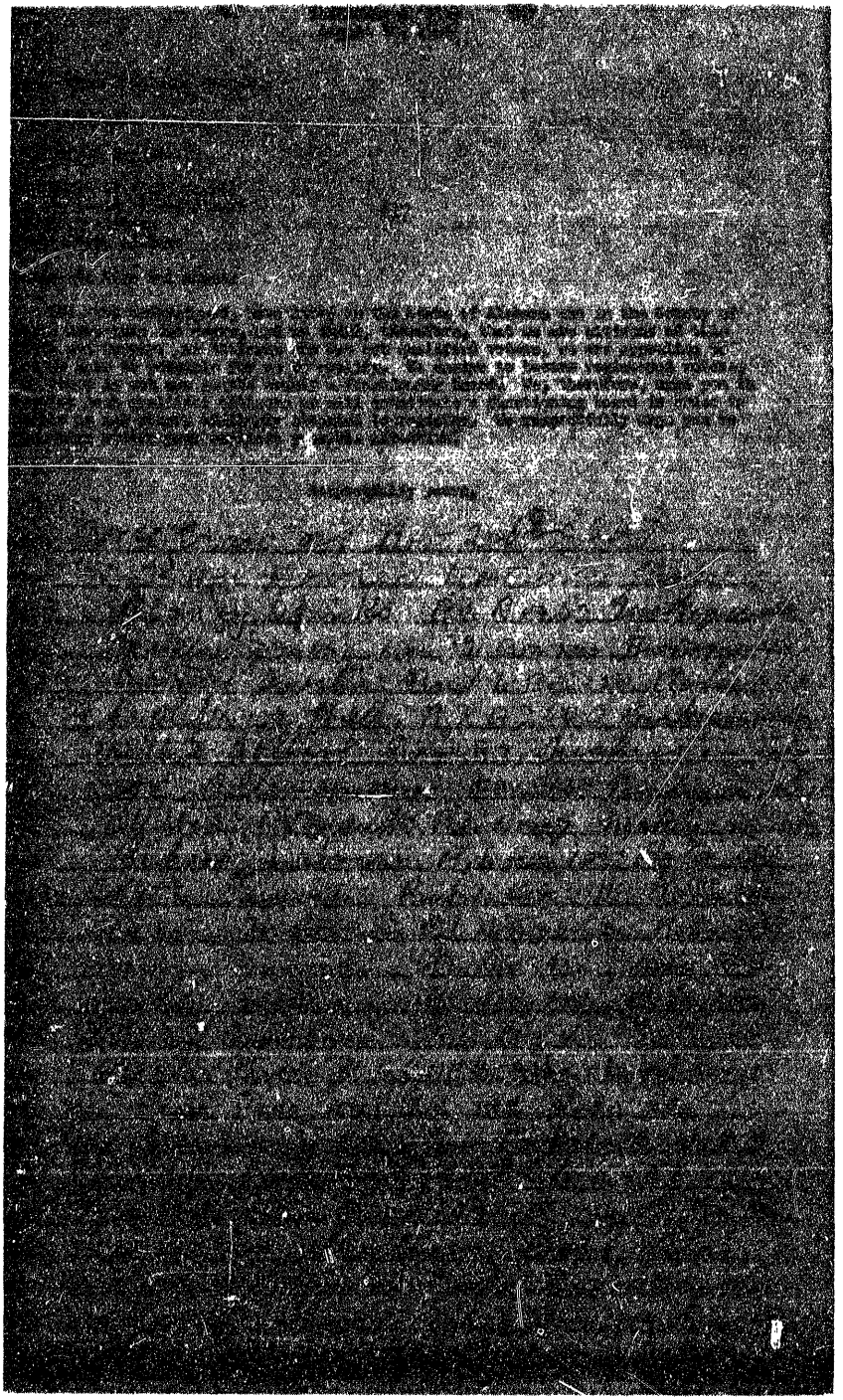
We, the undersigned, have lived in the State of Alabama and in the County of Macon more than ten years, and we think, therefore, that we are citizens of this State and County. As citizens who are not qualified voters, we are appealing to you to make it possible for us to qualify. We desire to become registered voters, but there is not now in the county a functioning board. We, therefore, urge you to appoint such qualified citizens as will constitute a functioning board in order to enable us and others similarly situated to register. We respectfully urge you to give this matter your earliest possible attention.

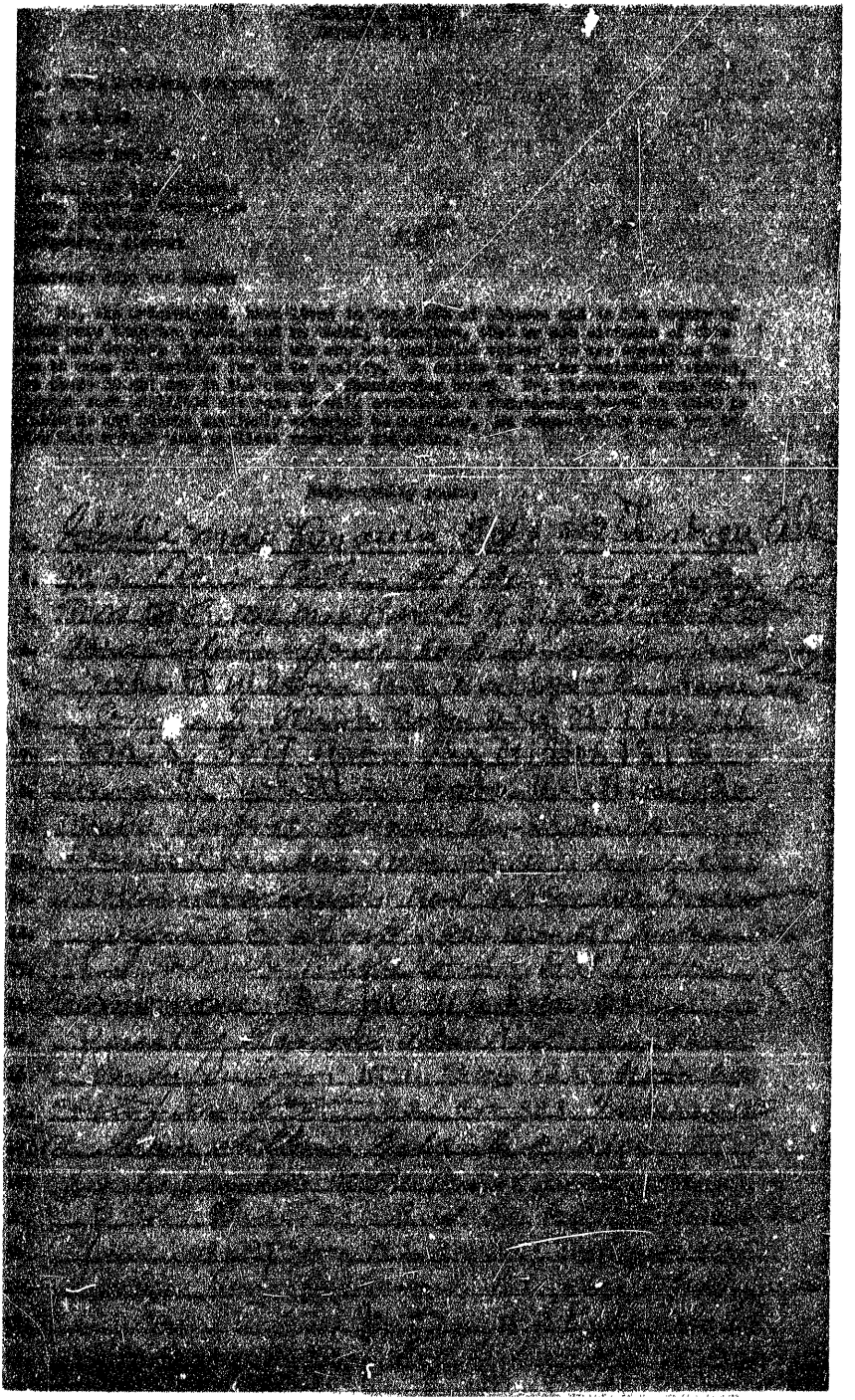
Respectfully yours,

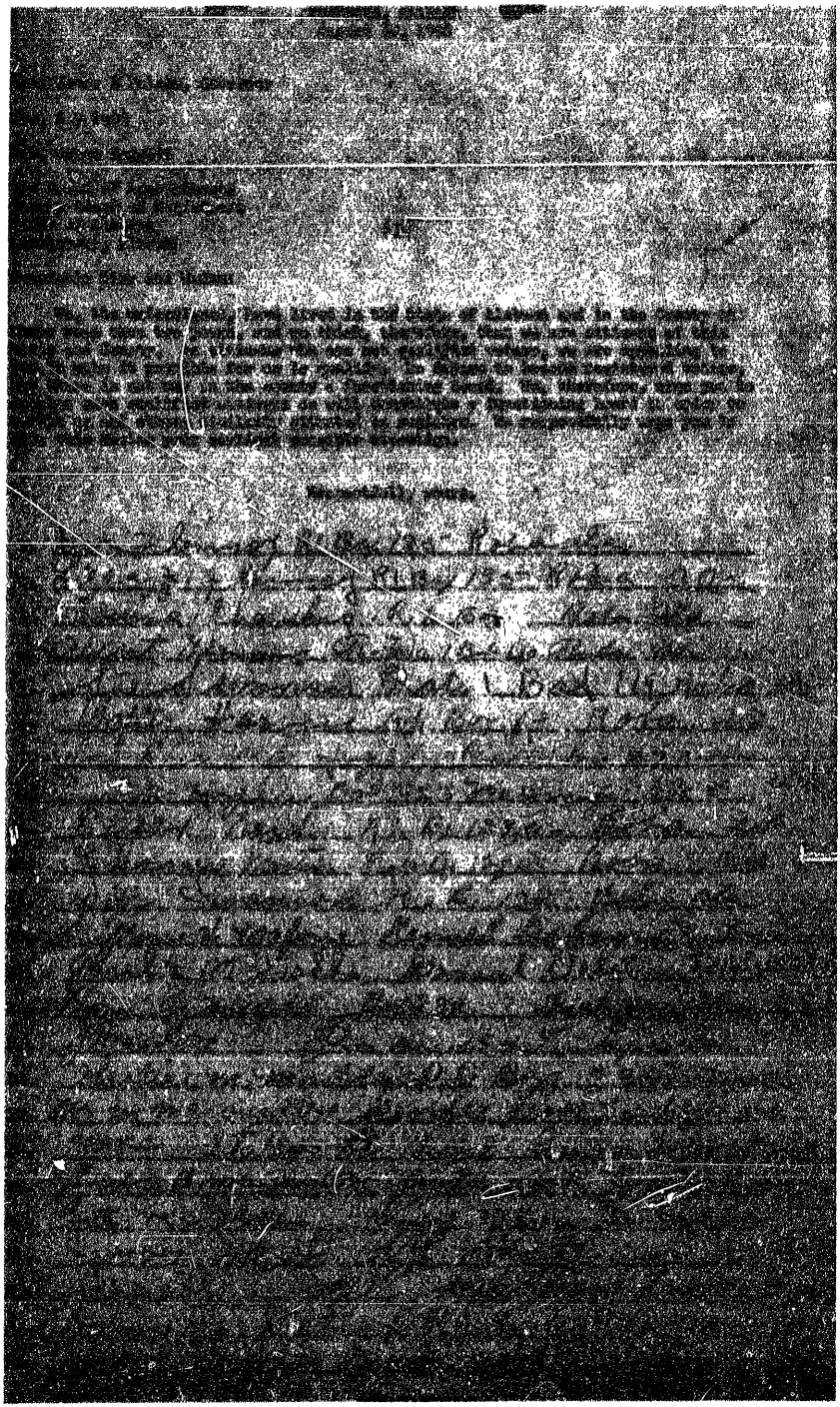
1. Willie E. Johnson, III Route 1, Tuskegee, Ala.
2. Lucille M. Horan, 204 E. Oak St., Tuskegee, Ala.
3. Bruce E. Boynton, 404 Elm St., Tuskegee, Ala.
4. Lucy D. Foy, Box 222, Tuskegee, Ala.
5. Russell H. Harper, 1210 Butler St., Tuskegee, Ala.
6. John L. Lewis, Jr., 1210 Butler St., Tuskegee, Ala.
7. Lillie Mae Harper, 1210 Butler St., Tuskegee, Ala.
8. T. R. Gilbert, Jr., 1210 Butler St., Tuskegee, Ala.
9. Lovelia Smith, 1211 Butler St., Tuskegee, Ala.
10. Bernice Gibson, 1211 Butler St., Tuskegee, Ala.
11. Mary E. Brewster, 1211 Butler St., Tuskegee, Ala.
12. Ethel M. Brewster, 1211 Butler St., Tuskegee, Ala.
13. Ollie Bryant, Route 1, Tuskegee, Ala.
14. Mary Johnson, Route 1, Tuskegee, Ala.
15. Lucille Lewis, 1210 Butler St., Tuskegee, Ala.
16. Leonard Lee Mason, 1211 Butler St., Tuskegee, Ala.
17. Willie Mae Lewis, 1210 Butler St., Tuskegee, Ala.
18. Alice Mae Lewis, 1210 Butler St., Tuskegee, Ala.
19. Leonard Lee Mason, 1211 Butler St., Tuskegee, Ala.
20. Mary Lee Harper, 1210 Butler St., Tuskegee, Ala.
21. Willie Lee Harper, 1210 Butler St., Tuskegee, Ala.
22. Willie Lee Harper, 1210 Butler St., Tuskegee, Ala.

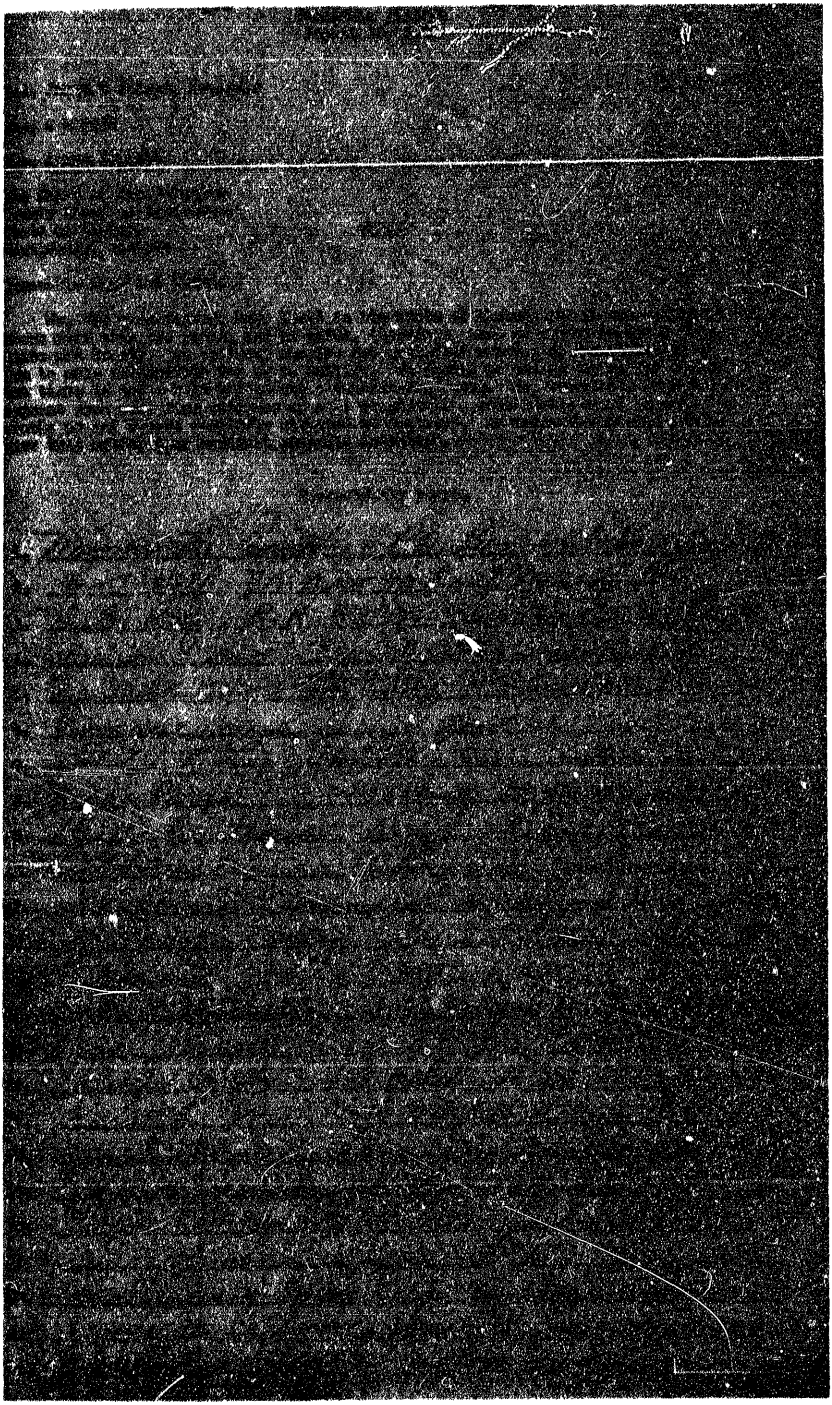


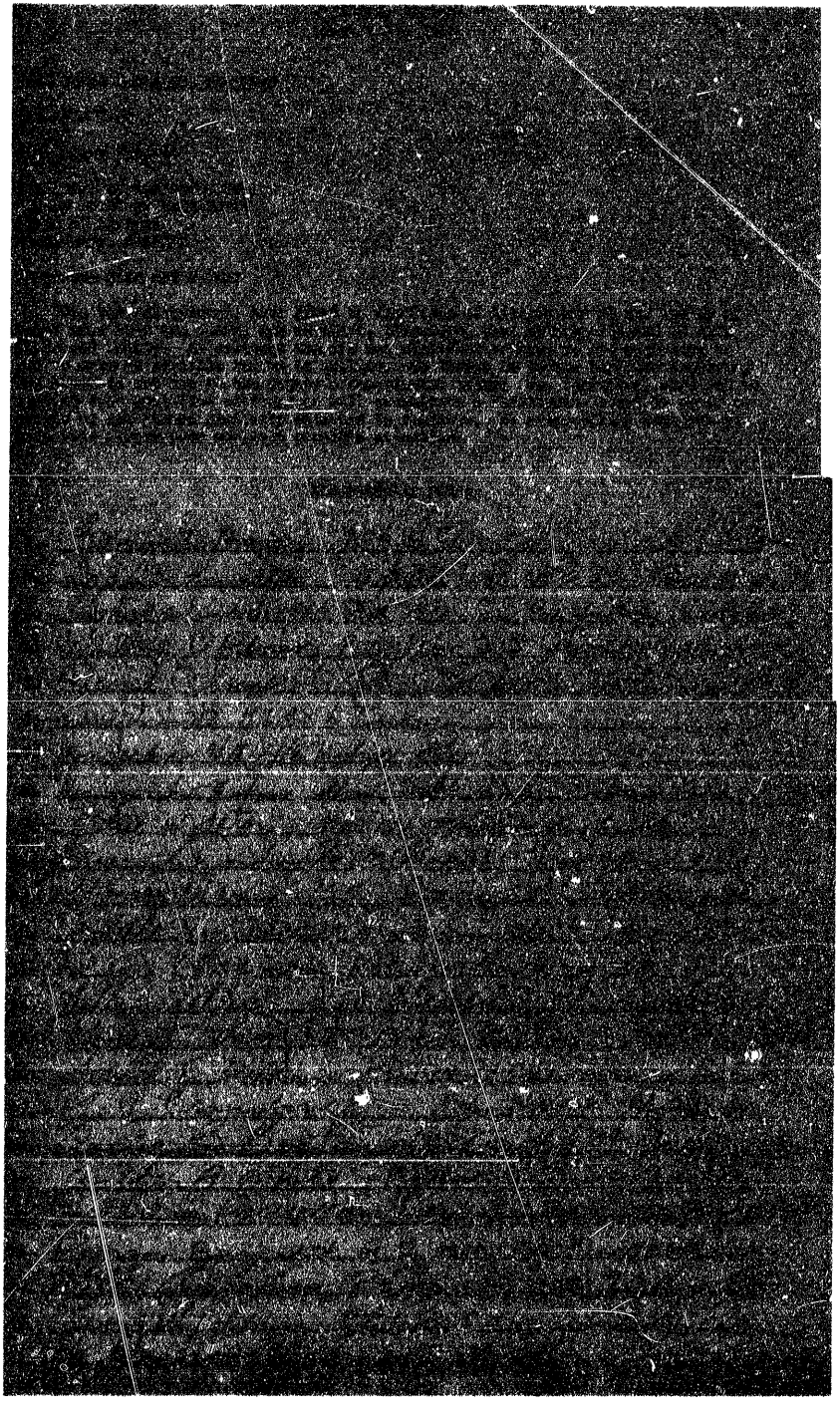


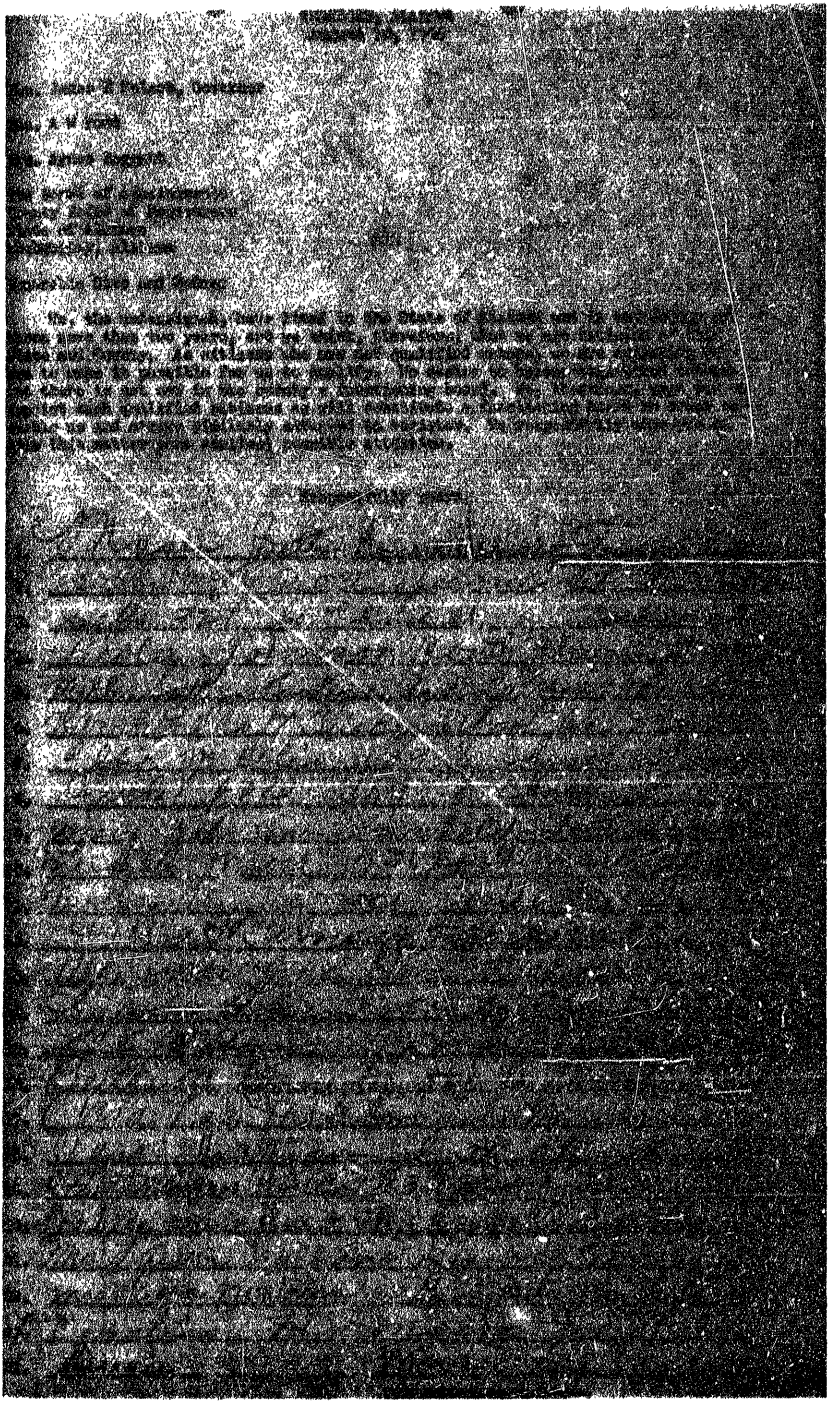


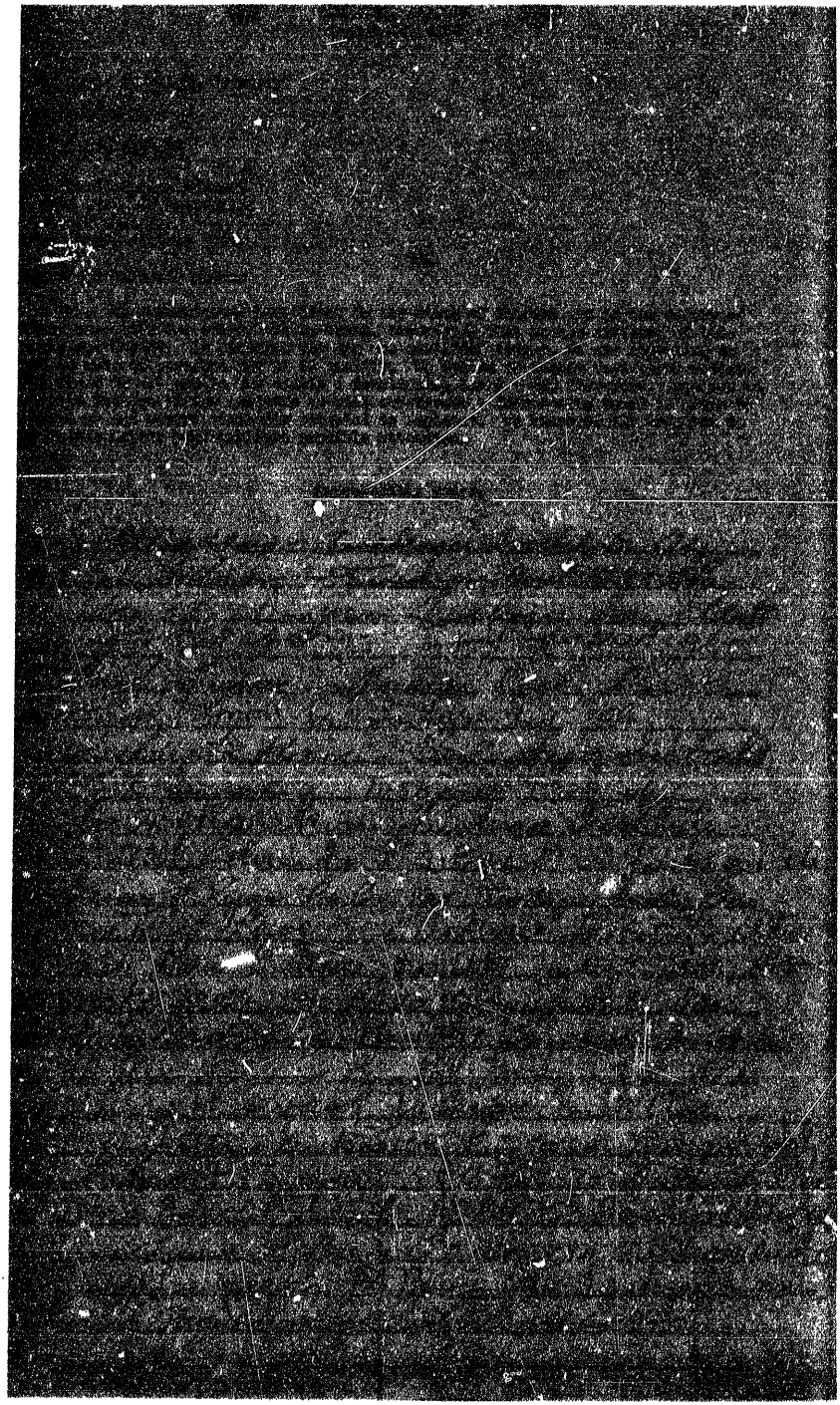


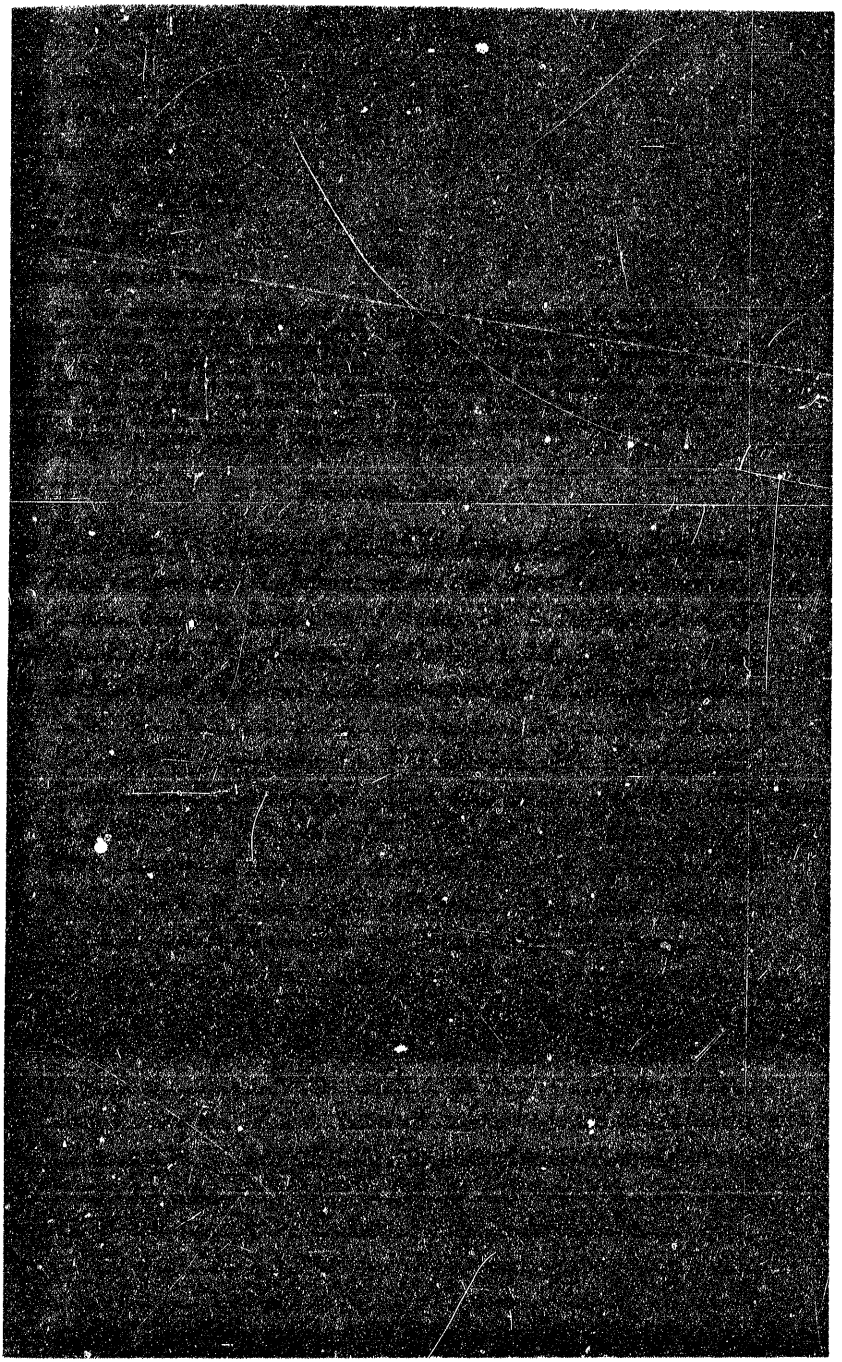


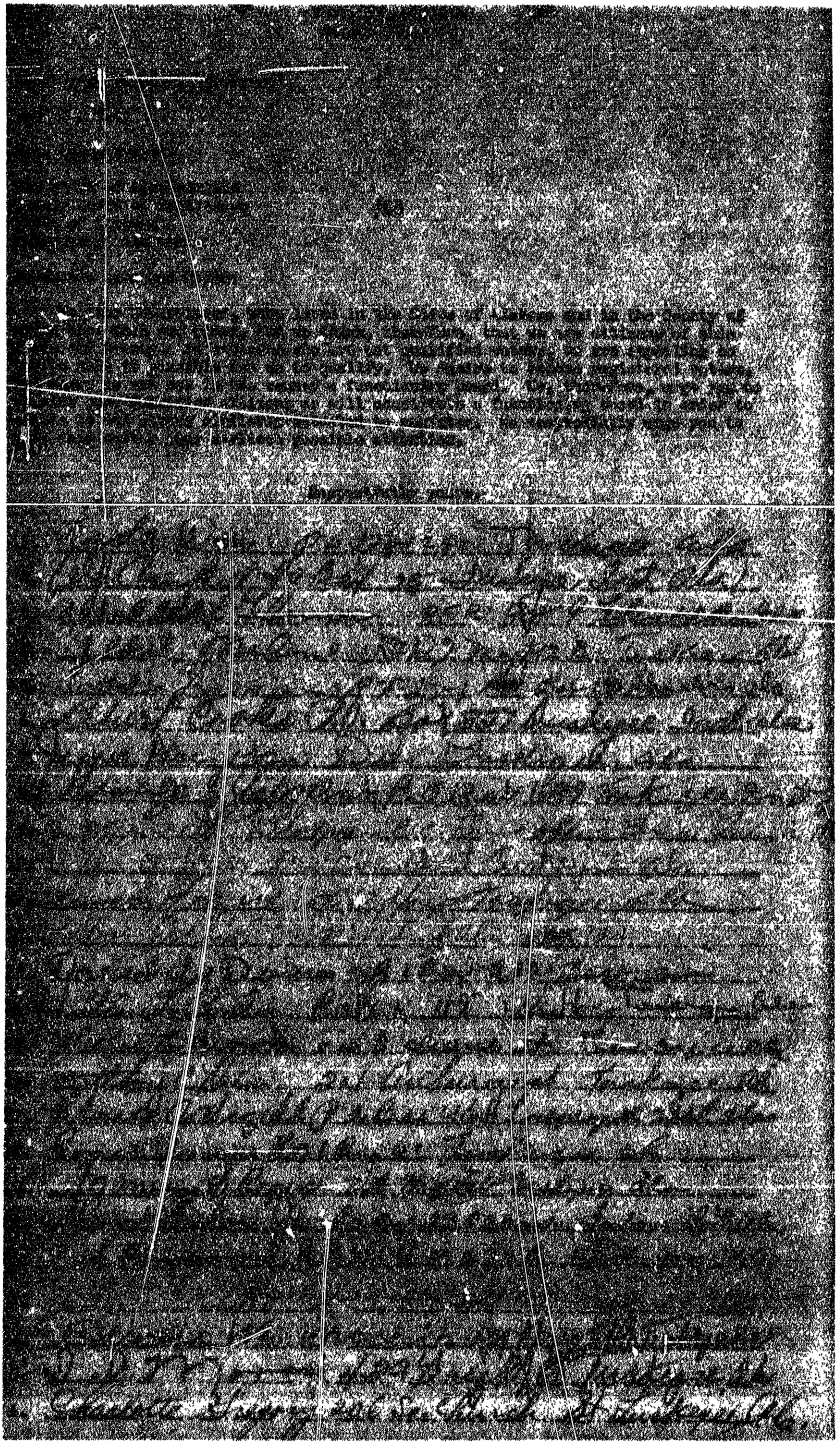


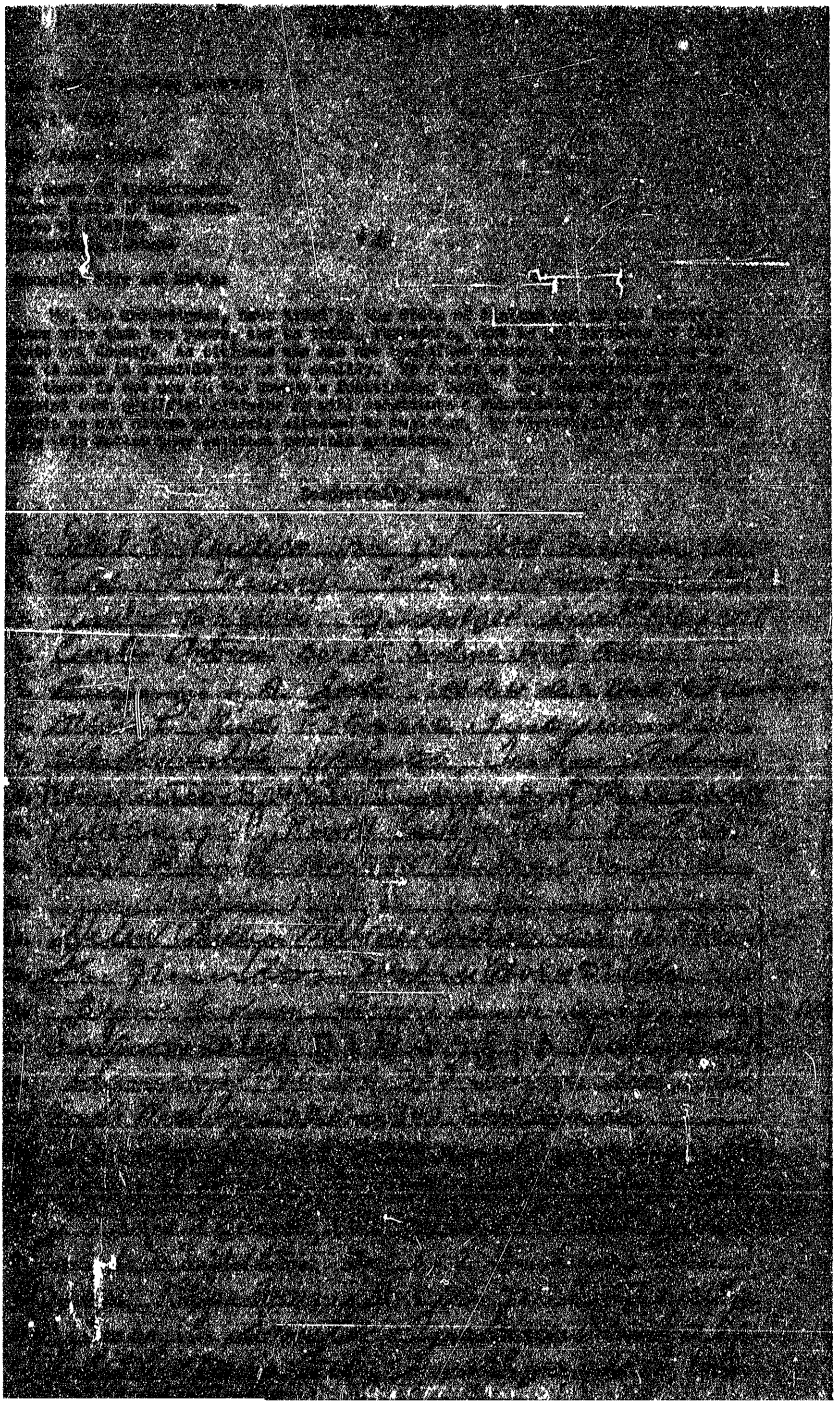


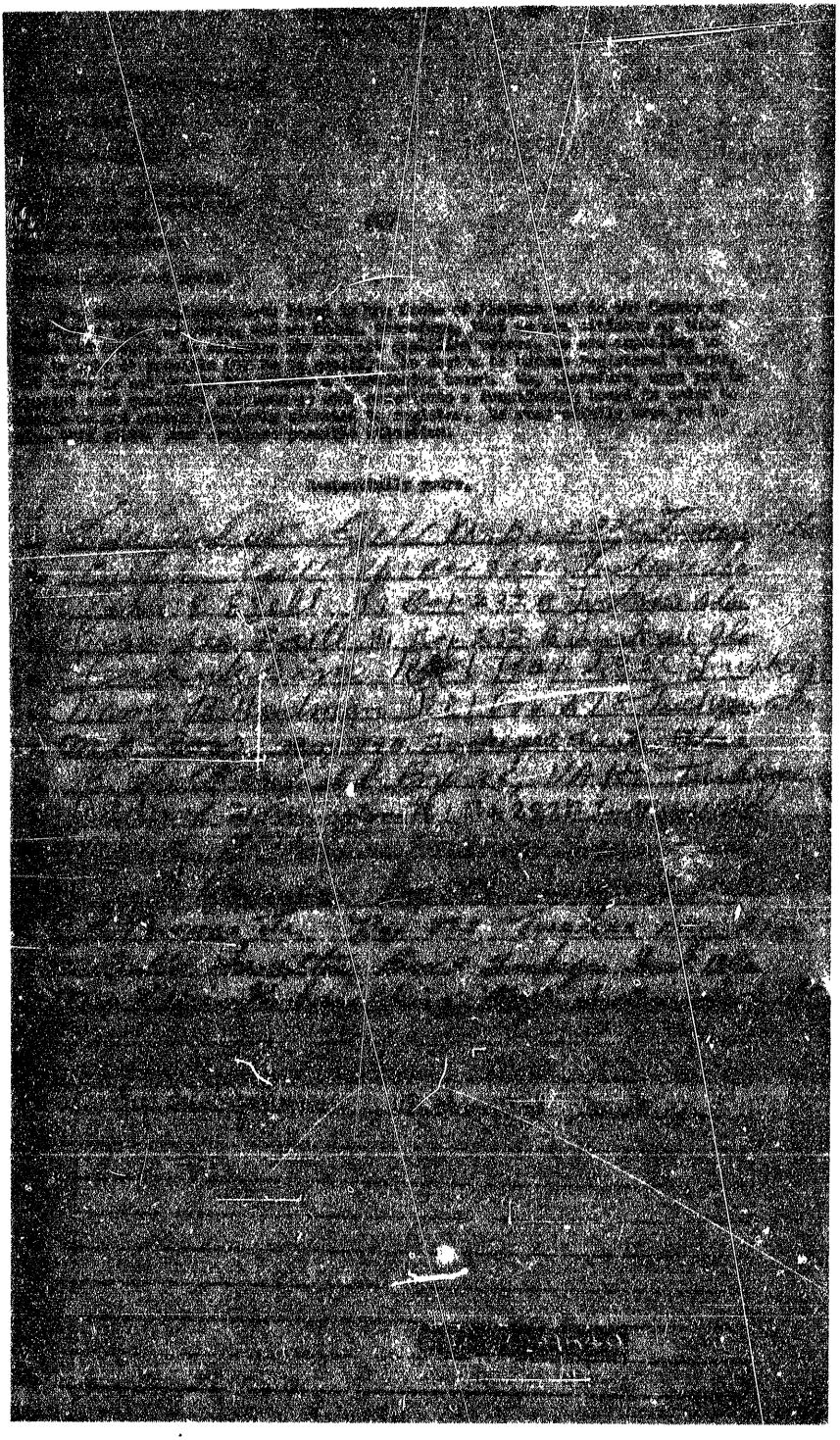












TUSKEGEE, ALABAMA
August 10, 1956

Hon. James E Folsom, Governor

Hon. A W Todd

Hon. Agnes Baggett

E 1 8

The Board of Appointment
County Board of Registrars
State of Alabama
Montgomery, Alabama

Honorable Sirs and Madam:

We, the undersigned, have lived in the State of Alabama and in the County of Macon more than two years, and we think therefore, that we are citizens of this State and County. As citizens who are not qualified voters, we are appealing to you to make it possible for us to qualify. We desire to become registered voters, but there is not now in the county a functioning board. We, therefore, urge you to appoint such qualified citizens as will constitute a functioning board in order to enable us and others similarly situated to register. We respectfully urge you to give this matter your earliest possible attention.

Respectfully yours,

1. Mrs. Ruby M. Pitts Box 311 Tuskegee Inst Ala
2. Mrs. Queen E. Powell R 1 Box 311 Tuskegee Inst Ala
3. Mrs. Josephine W. Mason Rt 2 Box 11 Tuskegee Ala
4. Mrs. Alice S. Lankford Tuskegee Ala
5. [illegible]
6. Lucy Tantum Rt 2 Box 11 Tuskegee Ala
7. Mrs. Pitts Box Tuskegee Rt 1 Box 311 Tuskegee Ala
8. [illegible]
9. [illegible]
10. [illegible]
11. [illegible]
12. [illegible]
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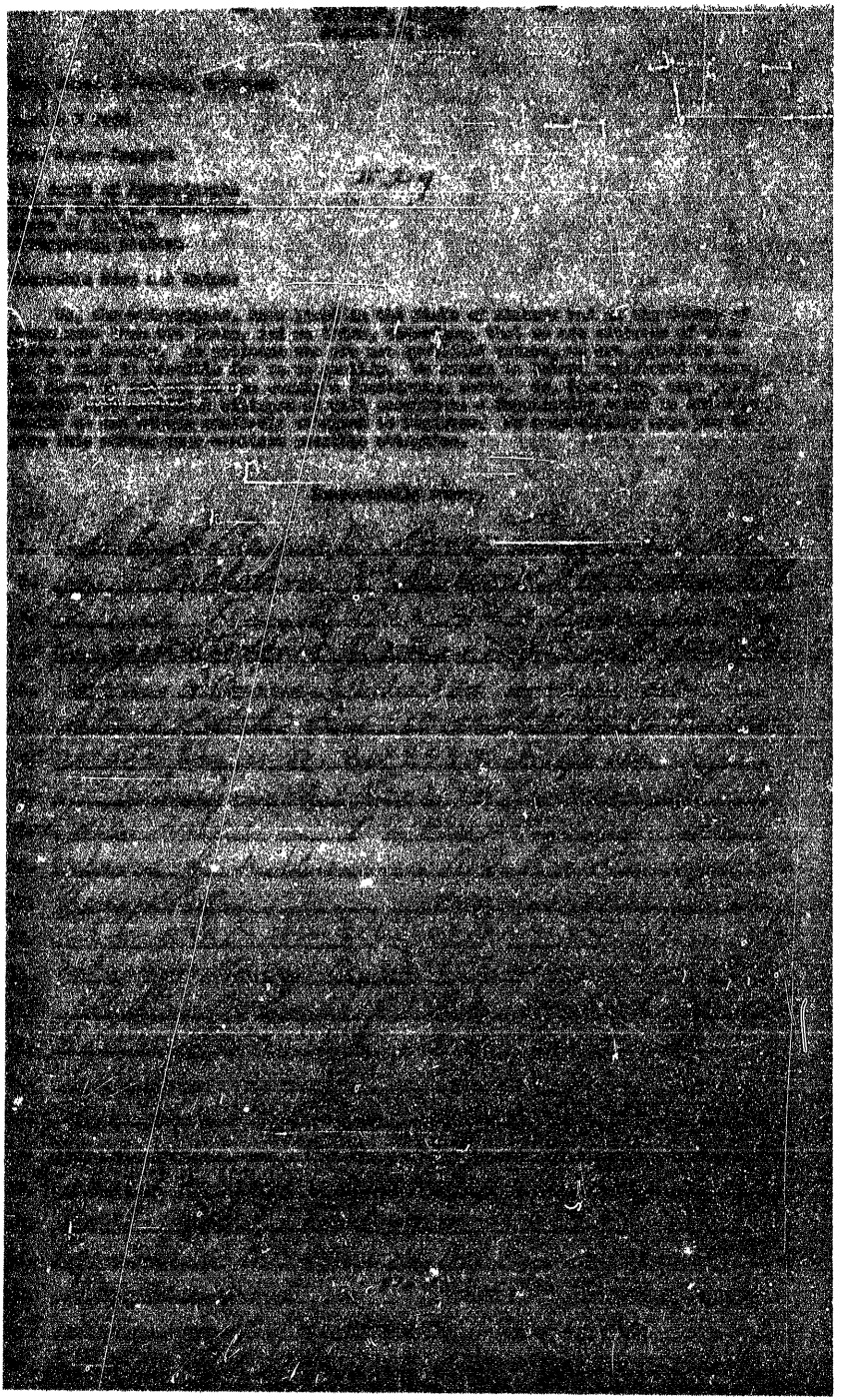

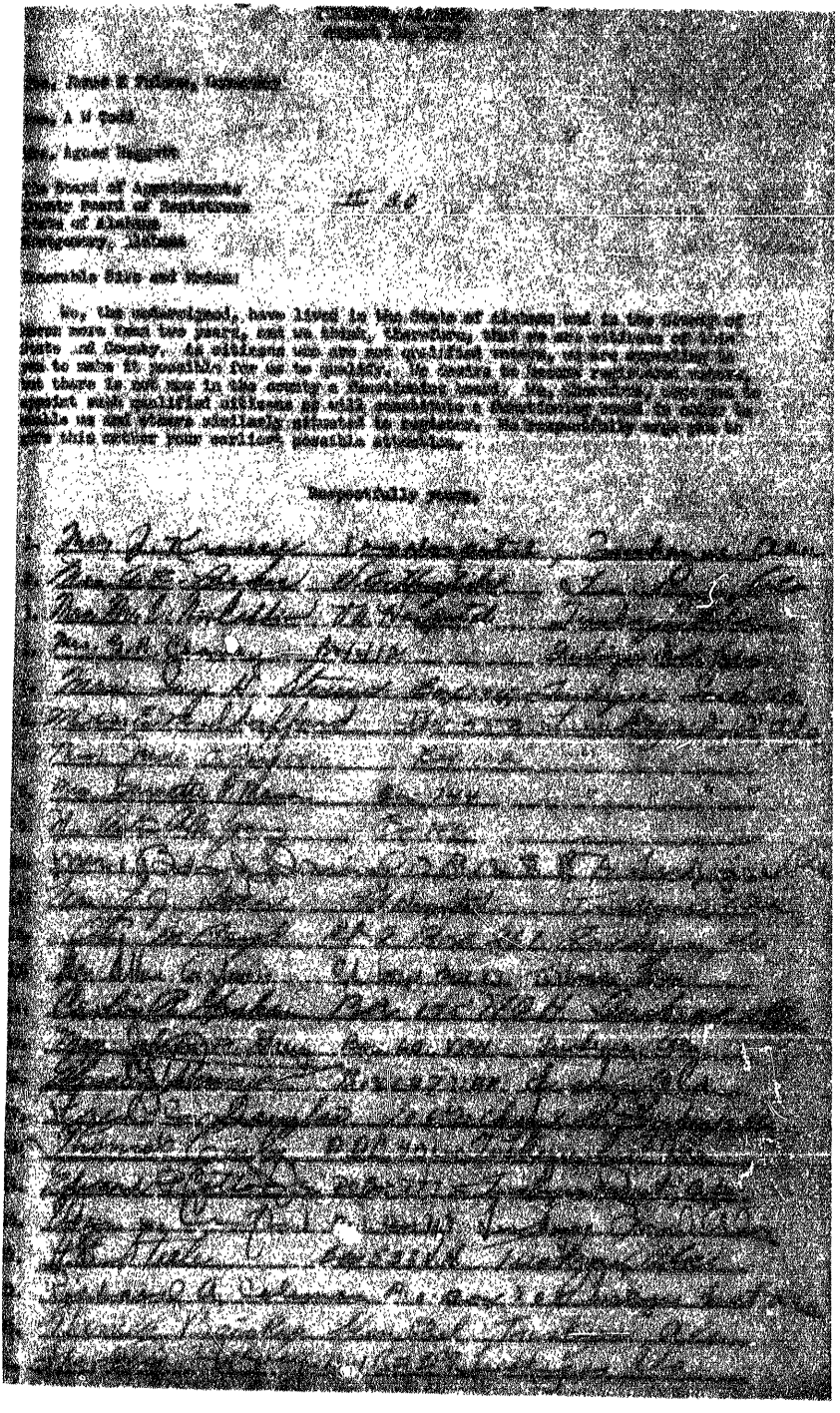

Mrs. Rosa S Parks, Secretary

Mrs. A W Dodd

Mrs. Agnes Baggett

The Board of Appointments
County Board of Registrars
State of Alabama
Montgomery, Alabama

Honorable Sirs and Madams:

We, the undersigned, have lived in the State of Alabama and in the County of Macon many years, and we firmly, therefore, that we are citizens of this State and County. As citizens who are qualified voters, we are appealing to you to make it possible for us to register. We desire to become registered voters, but there is not one in the county a Constitutional board. We, therefore, come to appeal with qualified citizens as will constitute a Constitutional board in order we qualify as and Honors violently attached to registers. We respectfully urge you to give this matter your earliest possible attention.

Respectfully yours,