CRIME OF LYNCHING

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

SEVENTY-SIXTH CONGRESS

THIRD SESSION

ON

H. R. 801

AN ACT TO ASSURE TO PERSONS WITHIN THE JURISDICTION OF EVERY STATE DUE PROCESS OF LAW AND EQUAL PROTECTION OF THE LAWS, AND TO PREVENT THE CRIME OF LYNCHING

FEBRUARY 6, 7, MARCH 5, 12, AND 13, 1940

Printed for the use of the Committee on the Judiciary

UNITED STATES
GOVERNMENT PRINTING OFFICE
215849 WASHINGTON : 1940

COMMITTEE ON THE JUDICIARY

HENRY F. ASHURST, Arizona, *Chairman*

WILLIAM H. KING, Utah
M. M. NEELY, West Virginia
PAT McCARRAN, Nevada
FREDERICK VAN NUYS, Indiana
CARL A. HATCH, New Mexico
EDWARD R. BURKE, Nebraska
KEY PITTMAN, Nevada
TOM CONNALLY, Texas
JOSEPH C. O'MAHONEY, Wyoming
JAMES H. HUGHES, Delaware
JOHN E. MILLER, Arkansas
A. B. CHANDLER, Kentucky

GEORGE W. NORRIS, Nebraska
WARREN R. AUSTIN, Vermont
JOHN A. DANAHER, Connecticut
ALEXANDER WILEY, Wisconsin
ROBERT A. TAFT, Ohio

SUBCOMMITTEE ON H. R. 801

FREDERICK VAN NUYS, Indiana, *Chairman*

M. M. NEELY, West Virginia
TOM CONNALLY, Texas

ALEXANDER WILEY, Wisconsin

CONTENTS

Statement of—	Page
Davis, Jr., Benjamin J	100
Davis, John P	95
Estell, E. C	41
Grovey, R. R	43
Hardison, Robert B	157, 167
Hastie, William H	84
Marmion, Jr., Charles G	22
McKellar, Senator Kenneth	129
Porter, G. F	33
Raper, Arthur	3
Spingarn, Arthur B	75
Tipton, Hon. Nat	144
Toohey, Patrick	108
White, Walter	51

CRIME OF LYNCHING

TUESDAY, FEBRUARY 6, 1940

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

The subcommittee met, pursuant to call, in the caucus room, No. 318, Senate Office Building, at 2 p. m., Senator Frederick Van Nuys (chairman) presiding.

Present: Senators Van Nuys (chairman), Neely, Connally, and Wiley.

Present also: Hon. R. F. Wagner, a Senator in Congress from the State of New York.

The subcommittee had under consideration H. R. 801, an act to assure to persons within the jurisdiction of every State due process of law and equal protection of the laws, and to prevent the crime of lynching.

(Said H. R. 801 is here set out in full, as follows:)

[H. R. 801, 76th Cong., 3d sess.]

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

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

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

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

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

SEC. 5. (1) Every governmental subdivision of a State to which the State shall have delegated functions of police shall be civilly liable for any lynching which occurs within its territorial jurisdiction or which follows upon seizure and abduction of the victim or victims by a mob within its territorial jurisdiction, in every case in which any officer (or officers) of that governmental subdivision charged with the duty or possessing the authority of preserving the peace, or citizens thereof when called upon by any such officer, have neglected or refused to use all diligence and all powers vested in them for the protection of the person or persons lynched. In every such case the culpable governmental subdivision shall be liable to each person injured, or to his or her next of kin if such injury results in death, for a sum not less than $2,000 and not more than $10,000 as monetary compensation for such injury or death: *Provided*, That the satisfaction of judgment against one governmental subdivision responsible for a lynching shall bar further proceedings against any other governmental subdivision which may also be responsible for that lynching.

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

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

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

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

Senator VAN NUYS. The committee will come to order. I will just take a moment to state the purpose of this meeting.

On the 10th of January the House of Representatives passed H. R. 801, commonly known as the antilynching bill. It came to the Senate the next day, and was referred to the Committee on the Judiciary. The chairman of that committee appointed Senators Neely, McCarran, Connally, Austin, Wiley, and myself as a subcommittee to handle the bill. It was agreed that we would hold open public hearings for the purpose of hearing witnesses, and the subcommittee is now here for the purpose of listening to any testimony that is relevant to the merits of this bill.

I want to admonish the witnesses that the public address system here is not working, and it will be necessary for them to talk somewhat louder than they would under ordinary circumstances.

Senator Wagner, of New York, who has for some time been interested in legislation of this sort, is present. With your permission, I will ask him to take the stand as the first witness.

Senator WAGNER. I would prefer to wait until later, Mr. Chairman, if you have no objection.

Senator VAN NUYS. That is quite all right.

I have a list of witnesses that has been furnished me. The first one is Dr. Arthur Raper. I will ask him to take the stand at this time.

STATEMENT OF ARTHUR RAPER, ATLANTA, GA.

Senator VAN NUYS. State your name.

Mr. RAPER. Arthur Raper.

Senator VAN NUYS. And your occupation.

Mr. RAPER. I am research and field secretary of the Commission on Interracial Cooperation.

Senator VAN NUYS. And where do you live?

Mr. RAPER. I live in Atlanta, Ga.

Senator VAN NUYS. With what association, if any, are you connected?

Mr. RAPER. I am research and field secretary of the Commission on Interracial Cooperation, a commission for the study of lynching.

Senator VAN NUYS. You are research and field secretary to that commission?

Mr. RAPER. Yes, sir.

Senator VAN NUYS. In your own way, boiling it down as much as possible, you may proceed to make your statement.

Mr. RAPER. Mr. Chairman and members of the Senate committee, it is my observation that the typical lynching occurs in the rural south. That has been my observation for some 10 or 12 years, 7 years of intensive investigation of lynching. The person lynched is generally a Negro. The mob victim is generally a Negro. The lynchers are native-born whites, and the courts punish none. But, not all the lynchings occur in the Southern States. Since 1930, according to the report of the Tuskegee Institute, there have been two lynchings in Maryland, two in West Virginia, two in Missouri, three in California, and one each in Ohio, Kansas, and North Dakota. Nor have all the victims been Negroes. There were three whites in California, two in Tennessee, two in Florida, and one each in Kentucky and Kansas.

Recent cases indicate that the mob pattern may readily spread. There were some evidences of it in the Chrysler strike in Detroit.

Lynching is, in fact, the most dramatic and final expression of the whole hierarchy of racial differentiation. Lynchings are the expression of the mob spirit, and are intended to create fear of the mob. The lynch threat operates to keep Negroes in their places, to rob them of the opportunity to exercise their basic human rights.

In one community in the South I was told that it was about time to have another lynching. They said that there had not been a lynching for about 3 years.

Senator CONNALLY. Mr. Chairman, I think the witness should tell who the man was and where he lived.

Mr. RAPER. It was about 6 years ago. I do not remember the man's name. It was at Oxford, Miss.

Senator CONNALLY. Did you know his name at the time?

Mr. RAPER. Yes, sir. I can get it for you.

Senator CONNALLY. If you are quoting someone else, I think you should name him.

Mr. RAPER. I can do that, if it is desired.

I said to him—he said to me, "It is about time to have another lynching." I said to him, "What do you mean—about time?" He said, "Oh, well, when the niggers get so that they are not afraid of being lynched, it is time to put the fear into them." "The fact is," he added, "so long as they are afraid of being lynched, there is little need of lynching." He said, "It is that restraining influence from the fear of lynching that is most effective." Mob expression takes its expression from the type of community. The Black Belt Negro is in less danger of being lynched. In many communities in the South the fear of lynching is an accepted and recognized method of racial control. The mob spirit seems to operate differently in different sections, sometimes taking expression in the burning of courthouses and similar matters, such as occurred in Sherman, Tex., and Shelbyville, Tenn.

I have studied about 100 lynchings. I have been on the ground at a considerable number of them.

Senator CONNALLY. Mr. Chairman, I would like to inquire whether these hearings are going to be consumed by preachments on the evolution of government. If that is the purpose, we will undoubtedly be here for an endless time. I thought the witness was going to tell us something about something he knew.

Mr. RAPER. That is just what I am trying to do.

Senator CONNALLY. I am talking to the chairman of the committee.

Senator VAN NUYS. Let me say to the witness that in respect to similar legislation the Committee on the Judiciary has held repeated public hearings. It is the hope of this subcommittee, I am sure, that there will be no cumulative testimony offered, but that the witnesses will speak to the merits of this bill. I want to subscribe to the opinion expressed by the Senator from Texas. Witnesses will be given the opportunity to state any facts within their knowledge bearing upon the question at issue. I am sure it is the hope of all the members of the committee that witnesses will confine themselves to such testimony.

Senator CONNALLY. You are making general statements here in regard to lynching.

Mr. RAPER. Yes, sir.

Senator CONNALLY. Were you ever present and did you ever see a mob in operation?

Mr. RAPER. Yes, sir.

Senator CONNALLY. Why did you not report it?

Mr. RAPER. I did.

Senator CONNALLY. Give us the names of some of the people in the mob. Did you take part in it?

Mr. RAPER. I did not. I was not in the mob. I offered to testify to what facts I had, to give such testimony as I could.

Senator CONNALLY. I thought you said you saw it in operation.

Mr. RAPER. I did not actually see the lynching. I did see people who were there and who knew something about what happened.

Senator VAN NUYS. Proceed.

Mr. RAPER. I think what I am about to say is germane to this legislation. Many of the lynchings occurred in the black belt. I have in mind particularly one at Shelbyville, Tenn., and the one I mentioned awhile ago at Sherman, Tex. That was where the courthouse was burned, to which I referred a moment ago.

Lynchers are usually unpunished. Half of those punished in Alabama in 1919 and 1920 received light sentences. I have sent the facts concerning lynchings to judges, prosecutors, and offered to testify, but have not been called upon. That applies particularly to Tuscaloosa, Ala.; Oxford, Miss.; Columbia and Nashville, Tenn.

I would like to refer briefly to the case of Elwood Higginbotham, at Oxford, Miss. According to the newspaper reports Higginbotham had murdered a white man. His trial, however, showed clearly that the charge against him should have been justifiable homicide.

Senator CONNALLY. You referred to the burning of a courthouse. I do not suppose you know that person was arrested and sent to jail. Did you know that?

Mr. RAPER. No, sir.

Senator CONNALLY. I did not think you did.

Mr. RAPER. As far as I know, the man was sent to jail, the man who set it on fire. That was a high-school boy. He threw in a match and set fire to it.

Senator CONNALLY. Were you there?

Mr. RAPER. Shortly afterward. People who were there talked to me and told me about it.

Senator CONNALLY. Did the court there handle the case?

Mr. RAPER. Yes, sir.

Senator CONNALLY. You think you were more capable than the court?

Mr. RAPER. Not at all.

Senator CONNALLY. Speaking of the Sherman, Tex., case, the court did handle them, and the court tried them.

Mr. RAPER. But he got a very light sentence for burning down the courthouse, which I should say was a serious offense.

In Oxford, Miss., there was a lynching, in which two well-known people had taken a very active part. I sent that information to the judge in the county seat, but nothing was done about it. Nothing came of it. There was another case where a Negro was charged with some crime, and he was picked up in an automobile and carried some distance and lynched. We had evidence that a police officer was in

the party. We took that to the judge in the court, and nothing was done about it.

Senator NEELY. You say they picked him up. What did they do with him?

Mr. RAPER. They lynched him. That was what I said.

Senator NEELY. I misunderstood you. I just thought that that should be in the record.

Mr. RAPER. Thank you. They lynched him.

Senator WILEY. About what time was that?

Mr. RAPER. That was about 1933.

Senator CONNALLY. If we are going to go back into the past, we will have to have the details of every lynching that ever happened, and we will be here until doomsday.

Senator NEELY. I believe this subcommittee will report the bill to the Senate and recommend its passage. I believe we should proceed in the regular way with any witnesses who have information to give to the committee, and that the opposition to the bill should receive similar treatment.

Senator VAN NUYS. Are you about through with specific instances?

Mr. RAPER. Yes, sir. I have finished with that. I used that as an illustration. That has been done in a number of instances. The present law does not meet the need. It seems to me, unless the people understand and expect lynchers to be punished, very little, if any, prograss can be made to wipe it out.

I started to tell you of that case of Elwood Higginbotham. He had some difficulty with a white man who was driving a cow across Higginbotham's land. That night, after he and his wife had gone to bed, someone knocked at the door. He told his wife that was probably someone to cause trouble. The door was broken down and this man rushed in and broke down the door to the bedroom. He was armed, and threatened to kill Higginbotham. However, Higginbotham was too quick for him, and shot him and killed him there in the bedroom in his house. He was arrested and taken to Jackson for safekeeping. Higginbotham was taken out by a mob and lynched.

I have scores of communications which can be produced, if you want to take the time for it. There is no doubt that these people ought to be punished, but with sentiment as it is in those communities it is impossible to properly punish them. People who see the lynchings are afraid to come in and testify. They know what will happen to them if they do. Public officials are afraid to do their duty in a case of that kind.

Senator WILEY. Would you not have the same experience in case of Federal legislation on the subject?

Mr. RAPER. What that all amounted to was that the people who are opposed to lynching were themselves intimidated and prevented from doing anything about it.

Senator WILEY. I asked you whether or not the same situation would not arise under Federal legislation. Would not the same intimidating processes go on?

Mr. RAPER. No; I think not. We had a case in the Federal district court in Augusta where some of the witnesses had been threatened. The court from the bench called attention to the fact that if any witness in the Federal court was molested in any way, very stern action would be taken. That would be very difficult for a local

county judge or local district judge. In my own observation, there is all the difference in the world between those two situations.

Senator WILEY. Would you not have the same situation in a Federal court as you have in those local courts?

Mr. RAPER. No, sir; it is very different, in my observation. For one thing, the judge of a circuit court is elected, while a Federal judge is appointed.

Senator WILEY. Would not the distinction there relate somewhat to the quality of the judges?

Mr. RAPER. No; I think not. A Federal judge cannot be removed except for improper behavior, and the situation of the local judge is quite different.

Senator WILEY. May I ask you this further question: In 1939 how many lynchings were there in this country?

Mr. RAPER. According to the Tuskegee Institute, there were three.

Senator WILEY. Where were they?

Mr. RAPER. Two in Florida and one in Mississippi.

Senator WILEY. How many were there in 1938?

Mr. RAPER. Six.

Senator WILEY. Where were they?

Mr. RAPER. They were scattered around in different States, all of them in the South.

Senator WILEY. Have you a table showing the number of lynchings for the last 10 years?

Mr. RAPER. Yes, sir.

Senator WILEY. Will you put that table in the record at this time?

Mr. RAPER. Here is a table from 1931 to 1935. I do not have the complete table for the 10 years with me at this time. The table I have is on page 7 of this pamphlet.

(The table referred to is here set forth in full, as follows:)

Accusations against persons lynched, 1930–35, 1889–1930

Year	Homicides	Felonious assaults	Rape	Attempted rape	Robbery and theft	Insult to white women	Other	Total
1931	5			6			3	12
1932	2	1	1	1		1	2	8
1933	10		3	3		1	11	28
1934	2		2	4		1	6	15
1935	7	1	3		2	1	6	20
Total	26	2	9	13	2	4	28	84
1889–1930	1,399	214	622	249	267	66	897	3,714
Grand total	1,425	216	631	262	269	70	925	3,798

Senator WILEY. Will you go into the merits of those three you spoke of, and show how in any of those cases a Federal law would apply?

Mr. RAPER. It seems to me, Senator, that the Federal law would apply to any or all of them. I have investigated over 100 lynching cases, some of which were investigated by the Attorney General's Office, but nothing was done.

Senator WILEY. There were three in 1939?

Mr. RAPER. Yes, sir.

Senator WILEY. You claim that in those three cases the officials in the counties in which they occurred were remiss in their obligations or duties?

Mr. RAPER. I have not said that, Senator.

Senator WILEY. Will you take those three cases and show how the particular law we are discussing would have remedied the situation.

Mr. RAPER. Let me take 1935.

Senator WILEY. No; you referred to three lynchings in 1939.

Mr. RAPER. I have not personally investigated those three. Since 1937 I have not been connected with that work.

Senator WILEY. Take the one instance in 1935. Where was that?

Mr. RAPER. Oxford, Miss., in 1934.

Senator WILEY. Now, you are jumping again.

Senator CONNALLY. I think that he should answer the Senator one way or the other.

Mr. RAPER. I was just looking at the record for 1934. I do not have a complete record for all those years. The *Higginbotham case* was in 1934.

Senator CONNALLY. I think he should answer the question about 1939.

Senator VAN NUYS. He testified that he did not investigate these cases in 1939, but had in 1935. Now he says it is 1934.

Mr. RAPER. That extends over a period there of 10 years.

Senator WILEY. I wanted to get your testimony as to where and how the Federal courts could better administer such a law than the local judges.

Mr. RAPER. May I get my records? I have the whole thing.

Senator WILEY. Yes.

Mr. RAPER. The *Higginbotham case* was in 1935. There was something over 100 in that 10-year period.

Senator WILEY. Go ahead.

Mr. RAPER. Higginbotham was in his home one night about 10 o'clock, and a rap came at the door. He was in bed with his wife.

Senator WILEY. Was he a white or a colored man?

Mr. RAPER. He was a Negro man. He had some difficulty with a white man that day who drove a cow across his land, and he did not get out of bed because he expected some trouble with this white man. They broke the door down and came and broke the door down to the bedroom. He was armed, the white man was, and in the difficulty they had the Negro killed the white man, standing in the bedroom door.

Senator CONNALLY. You told that once before.

Senator VAN NUYS. Do not repeat this.

Mr. RAPER. I beg your pardon. They arrested Higginbotham and took him to Jackson for safekeeping, and brought him back to Oxford and put him in jail. Then he had his trial, and they had 12 white jurors, and the report came out in some way that two of the white men on the jury thought that Higginbotham had killed this man in self-defense. When they learned this white jury was hung, then the mob came and took Higginbotham out and lynched him. If they had had a law of this kind, I think that would not have occurred.

Senator WILEY. What happened to the parties who did the lynching?

Mr. RAPER. Nothing in the world. Nobody was ever punished. I will be very happy, if you want to call me later, to give you full details of that case.

Senator NEELY. Did not the grand jury make an investigation?

Mr. RAPER. They made what I would call a perfunctory investigation. They said he came to his death at the hands of parties unknown.

Senator NEELY. Did you identify the two individuals to whom you referred in your letter to the judges?

Mr. RAPER. I said I was convinced they would testify to that if they were willing to testify.

Senator CONNALLY. Willing to testify to what?

Mr. RAPER. To what had taken place in regard to that case. I talked with a man there about it.

Senator NEELY. What did he say?

Mr. RAPER. He said there always had to be arrangements made for these jail breaks, and that was how they got into the jail and took him out and lynched him.

Senator NEELY. How did they get into the jail?

Mr. RAPER. Either because it was not locked or somebody must have let them in.

Senator NEELY. Was there any resistance by the officers?

Mr. RAPER. None whatever.

Senator WILEY. On the trial was there any conflict in the testimony as to just how this white man was shot by the colored man?

Mr. RAPER. There was evidence given by the wife of the dead man.

Senator WILEY. No other testimony?

Mr. RAPER. There was other testimony, but there was no other direct testimony. Two of the jurors felt that the man was not guilty of murder, and that held up the verdict of the jury. It was during that period of time that the mob took him out and lynched him.

Senator WILEY. Ten of the jurors apparently felt that he should be convicted. That causes me to stop and ponder for a moment. What appeared in the evidence that justified the conclusion that this man was shot while invading the home of the other, and rightfully shot?

Mr. RAPER. The whole thing seemed to turn on the contention that no Negro had the right to kill a white man, no difference what the situation was, and that a Negro who killed a white man should not be allowed to go free.

Senator CONNALLY. That is a base slander on the Southern States and is utterly untrue. I am surprised that any white man from the South would come here and make such an outrageous statement.

Mr. RAPER. I was basing it on the proceeding that occurred.

Senator CONNALLY. You know what I am talking about. I am surprised that any white man from the South would make such a statement. You were talking about the situation in the South.

Mr. RAPER. No; I didn't mean——

Senator CONNALLY (interposing). Let me speak for a minute. You said it was the attitude of the people there that they should not be punished, no matter what the facts were. You know that is an infamous falsehood.

Mr. RAPER. The Senator asked me, and I was speaking about the *Elwood Higginbotham case.*

Senator CONNALLY. I do not know anything about that case. You made a general statement, and it was an infamous falsehood.

Mr. RAPER. Didn't you ask me what the situation was in that case, whether it was 10 jurors for conviction and 2 against it?

Senator WILEY. No; I asked you what the evidence showed.

Mr. RAPER. In that case?

Senator WILEY. Yes. You apparently volunteered the statement. What did the evidence show as to why this man was shot, why this white man was shot, how this white man got into the colored man's home?

Mr. RAPER. When this white man came to Higginbotham's door, according to the testimony, he said to his wife that maybe he was there for trouble of some kind.

Senator WILEY. You stated that the white man was in the colored man's home.

Mr. RAPER. Yes, sir.

Senator WILEY. The colored man was in bed?

Mr. RAPER. Yes, sir.

Senator WILEY. The white man had a gun in his hand?

Mr. RAPER. Yes, sir.

Senator WILEY. Apparently with the intention of killing the colored man?

Mr. RAPER. Yes, sir.

Senator WILEY. Apparently there may have been some other factors involved in the case. However, it is not so very important.

Senator VAN NUYS. Go ahead.

Mr. RAPER. One other item and I shall have finished. To expect lynchers to be punished, even when lynchers include peace officers, under present laws, is asking the impossible. Lynchers now go unpunished because punishment of their crimes depends upon the same peace officers and court officers whose impotence they demonstrated when they lynched. The officers of the law have already shown their unwillingness or inability to administer justice. To expect these officers that connive at or wink at or permit lynching to arrest and punish lynchers is like expecting a dethroned government to punish those who overthrew it. It has been demonstrated many times that local communities in which lynchings occur will not punish the lynchers. But many local people would be glad to testify, if they could do so without danger to themselves. I am sure in many localities there are many people who would welcome the opportunity to stand up and perform their duty as citizens and testify against lynchers and against public officers for failure to perform their duty as such.

From January 1, 1930, to July 1, 1931, in the 10 Southern States, there were 68 Negroes executed and 13 whites. Life sentences were received by 470 negroes and 199 whites. According to the records kept at Tuskegee, a very small percentage of the negroes lynched were accused of crimes against women. Many of them were comparatively trivial cases. There was a lynching in Georgia in 1940 where a man was accused of no crime. There have been several instances since that time.

At Huntsville, Ala., there was a Negro accused of the death of a white man, and it was later found out that the white man had been killed by his own son. There was another instance in Norfolk, Va.,

where it was clearly shown that a Negro man was convicted under perjured testimony.

Senator CONNALLY. Where was that?

Mr. RAPER. Norfolk, Va. There was an attempt made to lynch him and he was protected by the officers.

Senator CONNALLY. The officers really protected a man there?

Mr. RAPER. They have protected many of them.

Senator CONNALLY. You have not told about that. Nobody will say that they have never been protected in the South. They have been.

Mr. RAPER. It is a fact that they have not been protected commensurate with their rights as citizens.

Senator CONNALLY. You were not there and you know nothing about what actually happened.

Mr. RAPER. No, sir. I have talked with people who were there. The mob spirit must be subjected to the law. So long as the mob still rides, American citizens will fail to receive the rights guaranteed to them by the law of our land.

Senator CONNALLY. Where are you from?

Mr. RAPER. Atlanta.

Senator CONNALLY. You have your headquarters there?

Mr. RAPER. Yes, sir.

Senator CONNALLY. Where do you live?

Mr. RAPER. Decatur.

Senator CONNALLY. Where is that?

Mr. RAPER. Just outside of Atlanta.

Senator CONNALLY. What is your street address?

Mr. RAPER. 228 Broad Avenue.

Senator CONNALLY. Where is your office in Atlanta?

Mr. RAPER. 710 Standard Building.

Senator CONNALLY. What is your business?

Mr. RAPER. Research work.

Senator CONNALLY. For whom?

Mr. RAPER. I worked for the National Foundation for the Advancement of the American Negro.

Senator CONNALLY. By whom is that financed?

Mr. RAPER. The Carnegie Corporation of New York.

Senator CONNALLY. Do you draw a salary?

Mr. RAPER. Yes, sir.

Senator CONNALLY. How much?

Mr. RAPER. $4,250 a year.

Senator CONNALLY. Did you come here from Atlanta on your own motion?

Mr. RAPER. No, sir. I was asked to come here.

Senator CONNALLY. By whom?

Mr. RAPER. Walter White.

Senator CONNALLY. Who is he?

Mr. RAPER. Secretary of the National Association for the Advancement of Colored People.

Senator CONNALLY. Do you know him well?

Mr. RAPER. Well enough to have seen him a few times.

Senator CONNALLY. Who paid your expenses up here?

Mr. RAPER. White said he would pay them.

Senator CONNALLY. He is secretary of the Association for the Advancement of Colored People?

Mr. RAPER. Yes, sir.

Senator CONNALLY. I want to say that, so far as the colored race is concerned, I think as much of them as any man. I have represented many of them in court against white people. I have lived among them for many years. I think I know as much about them as anybody. I am not out of sympathy with the effort to advance the colored race, but I am convinced that the progress and the advancement of the colored people in the South has been going on for a long time, and will continue.

Mr. RAPER. I think that is true.

Senator CONNALLY. Then we agree that far?

Mr. RAPER. Yes, sir.

Senator CONNALLY. How much per diem do you get while you are here?

Mr. RAPER. Not any.

Senator CONNALLY. You testified a good deal about 1935 and 1934, but you have not testified very much about 1939.

Mr. RAPER. I am working now for the Carnegie Corporation. At the time I testified about I was working for the Southern Commission.

Senator CONNALLY. Is it not a fact that during 1939 there were only two lynchings that would come within the terms of this bill, if it were enacted? Is it not true that one of those cases was one where two men were involved, two brothers that killed a colored cab driver who ran over their small brother?

Mr. RAPER. I do not know the details of that.

Senator CONNALLY. You are not prepared to deny that, are you?

Mr. RAPER. No, sir.

Senator CONNALLY. You are also interested in gang murders, are you not?

Mr. RAPER. To the extent of what is going on; I am.

Senator CONNALLY. Let us come down to something definite. Are you not just as much opposed to a gang of white men in New York or elsewhere going out and murdering other white men as you are to lynching Negroes?

Mr. RAPER. I am opposed to anything of that kind, any kind of killing of people.

Senator CONNALLY. Would you favor including in this bill a provision which would prevent gang murders?

Mr. RAPER. I would be in favor of that, if it can be done.

Senator CONNALLY. It can be done.

Mr. RAPER. I am opposed to any kind of murders, whether they are colored people or whether they are white people.

Senator CONNALLY. We are talking about the law now, the proposed law.

Mr. RAPER. I do not want to protect the gang murderers.

Senator CONNALLY. Would you favor including a clause in the bill to cover that?

Mr. RAPER. If it can be done without vitiating the bill.

Senator CONNALLY. How about mass murders in labor disputes, cases during a strike where men are killed in public places?

Mr. RAPER. It is my observation that specific situations of that kind require specific legislation. Of course, that is something that ought to be dealt with, if local legislation does not cover it.

Senator CONNALLY. Take a thickly populated section, with the A. F. of L. and the C. I. O. engaged in a big strike.

Mr. RAPER. That is a serious situation.

Senator CONNALLY. Would not the same reasoning impulse there say they ought to be turned over to the Federal Government? You are an expert. You said so.

Mr. RAPER. On lynching, but not on everything else.

Senator CONNALLY. You said that you were interested in everything of that kind. What difference does it make whether it is in the North or in the South?

Mr. RAPER. We have more lynchings of Negroes in the South than in the North.

Senator CONNALLY. Where were you born?

Mr. RAPER. North Carolina.

Senator CONNALLY. Where?

Mr. RAPER. Near Winston-Salem.

Senator CONNALLY. How long have you been in this business?

Mr. RAPER. I went to Atlanta in 1926.

Senator CONNALLY. Do you get your expenses every time you go out on any matter?

Mr. RAPER. Sure.

Senator CONNALLY. That is your business?

Mr. RAPER. That is my business.

Senator CONNALLY. You are in that business for revenue only?

Mr. RAPER. For a livelihood.

Senator CONNALLY. That is revenue, is it not?

Mr. RAPER. I am in the business to earn a livelihood.

Senator CONNALLY. You live in Georgia. Let me ask you about some things that happened in 1939. Do you know where Madison County is?

Mr. RAPER. Danielsonville?

Senator CONNALLY. Yes.

Mr. RAPER. Yes.

Senator CONNALLY. Royston?

Mr. RAPER. Yes.

Senator CONNALLY. Do you know where that is?

Mr. RAPER. Yes.

Senator CONNALLY. Did you know that last year a 17-year old Negro boy, charged with shooting and attempting to attack a white woman, was removed to another county by State troopers who were called to Royston to prevent a lynching, and that the Negro was later tried and given 20 years? Did you know about that?

Mr. RAPER. I did not know about that specific case.

Senator CONNALLY. You said that from 1930 to 1935 you were engaged in that work. Since that time you have been doing other things?

Mr. RAPER. Yes, sir.

Senator CONNALLY. How can you get away from your other business and come up here? Did they give you a leave of absence?

Mr. RAPER. One day.

Senator CONNALLY. Just 1 day?

Mr. RAPER. Yes, sir.

Senator CONNALLY. Did you know that in 1939 in Monroe, Walton County, a Negro man, charged with criminally attacking a white woman, was removed to Atlanta for safekeeping; that a mob of about 1,500 persons formed around the courthouse when the Negro

was brought back for trial about 3 weeks later; that the State troopers were present, however, and there was little disorder, and the Negro was sentenced to death? Did you know about that?

Mr. RAPER. No, sir.

Senator CONNALLY. I thought you said you knew about all these cases.

Mr. RAPER. I do not know about that one.

Senator CONNALLY. What you know about are lynching cases?

Mr. RAPER. Yes, sir.

Senator CONNALLY. You did not know about that case in Monroe, Walton County?

Mr. RAPER. No, sir.

Senator CONNALLY. You just keep your ears open for lynchings, do you?

Mr. RAPER. During the time I was studying lynchings. I am not studying them now.

Senator CONNALLY. You are studying them enough to come up here to testify.

Mr. RAPER. Because I studied them for several years.

Senator CONNALLY. Because Walter White would pay your expenses. Do you know where Louisville, Ga., is?

Mr. RAPER. Yes, sir.

Senator CONNALLY. Did you know that a deputy sheriff, named Louis D. Hubbard, was killed when he surprised four Negroes running a still; that two were captured and removed to Augusta, Richmond County, for safekeeping; that two Negroes escaped; that the man killed was the son of the sheriff who prevented the lynching; that the two who escaped were later apprehended? Did you know about that?

Mr. RAPER. No, sir. Let me say for the record——

Senator CONNALLY (interposing). Wait a minute. You do not know about that case, in which the sheriff prevented the lynching of the man who killed his own son?

Mr. RAPER. I know that did occur. I said I had not been studying those cases in recent years. May I say what I did during the time I was studying lynchings?

Senator CONNALLY. I am talking about these particular cases.

Mr. RAPER. The time element comes in here.

Senator CONNALLY. Do you know where Douglas, Ga., is?

Mr. RAPER. Yes, sir.

Senator CONNALLY. Did you know about a 22-year-old white boy, accused of killing his stepmother, who was removed to Waycross, because, as the sheriff explained, "there was a lot of excitement here about the thing"?

Mr. RAPER. Yes, sir.

Senator CONNALLY. Do you know where Avera is?

Mr. RAPER. What county?

Senator CONNALLY. I do not know. A Negro accused of murder was removed for safekeeping. Did you know about that?

Mr. RAPER. No, sir.

Senator CONNALLY. Do you know where Brandon, Miss., is?

Mr. RAPER. No, sir. I would like to make just a brief statement.

Senator CONNALLY. All right.

Mr. RAPER. One of the things we did was to try to work out a program. The chief of police of a certain town came in our meeting and

made some very valuable suggestions on the subject of lynching, and we were trying to carry out that sort of program.

Senator CONNALLY. Have you read this bill?

Mr. RAPER. Yes, sir.

Senator CONNALLY. How many times?

Mr. RAPER. Until I could understand it.

Senator CONNALLY. After you got here?

Mr. RAPER. Three or four days ago, and yesterday.

Senator CONNALLY. Walter White sent it to you and told you to read it?

Mr. RAPER. These bills come out from the Senate.

Senator CONNALLY. They do not go to everyone. Anyway, you read it?

Mr. RAPER. Yes, sir.

Senator CONNALLY. H. R. 801?

Mr. RAPER. Yes, sir.

Senator CONNALLY. You did not know that in Brandon, Miss., on February 25, a white man, charged with the murder of his wife, was rushed to an unannounced jail in a distant county, when a mob, led by the relatives of the dead woman, formed and surrounded the building where the murderer was being tried?

Mr. RAPER. No, sir.

Senator CONNALLY. He was a white man.

Mr. RAPER. I know that kind of thing has been done. I know it has been done more than once.

Senator CONNALLY. I suppose you feel that you are responsible for this movement in the South to stop lynching.

Mr. RAPER. No, sir; I was merely research secretary of this international commission.

Senator CONNALLY. Why did you leave that work?

Mr. RAPER. We finished that job.

Senator CONNALLY. It kept on going, did it not?

Mr. RAPER. We thought we finished it.

Senator CONNALLY. Then you quit?

Mr. RAPER. There were other people working on it.

Senator CONNALLY. Walter White?

Mr. RAPER. Walter White was not on that committee.

Senator CONNALLY. March 6, in Carthage, Miss., two Negro prisoners, charged with murder, were removed to an unannounced jail when "a good deal of feeling against the prisoners became evident." Did you know about that? Have you ever been in Mississippi?

Mr. RAPER. I was there 2 weeks ago.

Senator CONNALLY. Did you know about that case?

Mr. RAPER. I think so.

Senator CONNALLY. Did you know on January 20, in Louisville, Miss., two white farmers, charged with attacking a 14-year-old white girl, were removed to Jackson for safekeeping?

Mr. RAPER. I have not studied that particular case.

Senator CONNALLY. You want to go back to a period several years ago. We are not interested in ancient history. I want to find out what you know about the situation in 1939. You say you do not know anything about it.

Mr. RAPER. Not about that specific case.

Senator CONNALLY. I am talking about 1939. You do not know anything about those three lynchings?

Mr. RAPER. I know something about the kind of people who were lynched and the situation in which they were lynched. I did not personally investigate those cases in 1939.

Senator CONNALLY. You are a native of North Carolina.

Mr. RAPER. Yes, sir.

Senator CONNALLY. Do you know where Micro, Johnston County, is?

Mr. RAPER. Yes, sir.

Senator CONNALLY. Did you know that on October 30 the sheriff of that county said that threats of mob action caused him to place a Negro in central prison at Raleigh, pending a hearing on charges of criminal assault? He said that the Negro, a railroad section hand, confessed to entering a home and assaulting a widow, the mother of three children. Did you know of that?

Mr. RAPER. No, sir; I have already answered all the questions you can ask during that period.

Senator CONNALLY. I thought on account of your great interest you would keep up your investigations. South Carolina, April 18, near Greenville, a 32-year-old Negro farm laborer, charged with attempted assault on a white woman, was removed for safekeeping. You do not know anything about that, either, do you?

Mr. RAPER. I did not investigate that.

Senator CONNALLY. Do you know where Nashville, Tenn., is?

Mr. RAPER. Yes, sir.

Senator CONNALLY. Did you know that an 18-year-old boy—race not stated, so evidently white—accused of rape on a small girl near Columbia was removed to Davidson County jail when threats of mob violence were heard. You did not know about that, either, did you?

Mr. RAPER. I did not.

Senator CONNALLY. Chatham, Va., Sam Swanson, Negro, charged with murder, was saved from a mob by Jailer A. Edwards. Did you know about that?

Mr. RAPER. No, sir. It is impossible for me to know all about those individual cases all over the South.

Senator CONNALLY. I am trying to test your knowledge. You are here to testify, and I am trying to develop that you do not know anything about what happened in 1939. Did you know that in Oklahoma on August 21 a white man, accused of murdering his wife, was removed for safekeeping?

Mr. RAPER. May I ask the source of your information?

Senator CONNALLY. The Association of Southern Women for the Prevention of Lynching, coming from Atlanta, Ga., 710 Standard Building. That is the building in which you are located, is it not?

Mr. RAPER. Yes, sir.

Senator CONNALLY. The same place where you have your office?

Mr. RAPER. Yes, sir.

Senator CONNALLY. This information was furnished by Mrs. Jessie Daniel Ames.

Mr. RAPER. Yes; I know her.

Senator CONNALLY. And they are doing that work very successfully.

Mr. RAPER. And I have helped them.

Senator CONNALLY. But they do not favor the Federal Government doing it. I am trying to learn from you what you know of what happened in 1939. Did you know that in Greensborough, Ala., on

January 9, a Negro, accused of murder, was protected by augmented guards?

Mr. RAPER. No, sir.

Senator CONNALLY. And in Tallassee, Ala., three Negroes were saved from a mob by Mrs. W. A. Austin, sheriff, who had a deputy smuggle prisoners to Montgomery jail. They were charged with the murder of a white planter. You did not know anything about that, either, did you?

Mr. RAPER. I did not.

Senator CONNALLY. What do you want to have done?

Mr. RAPER. Specific measures for the prevention of lynching. I think the adoption of the Federal law is the most important thing. I also think a consolidation of small counties into larger units would be of benefit, and prompt punishment of mob leaders. I think lynching should be stopped.

Senator CONNALLY. We all agree to that.

Mr. RAPER. In many cases prompt action on the part of officers of the law might have prevented lynchings.

Senator CONNALLY. You are not opposed to that?

Mr. RAPER. No, sir.

Senator CONNALLY. Did you recommend a Federal law in that report?

Mr. RAPER. No, sir. It had not been brought up at that particular time. I recommended what these southern people were doing through cooperation. I did not at that time advocate a Federal law.

Senator CONNALLY. But you now say, having talked with Walter White, we should have a Federal law?

Mr. RAPER. No, sir. I am 10 years older and have seen 100 people lynched.

Senator CONNALLY. You have seen them lynched—100 people?

Mr. RAPER. I did not say that.

Senator CONNALLY. You are under oath here, or I suppose you are, or should be. Now you say you saw 100 lynchings.

Mr. RAPER. That is a technicality.

Senator CONNALLY. I ask to have the statement read.

(The following was thereupon read by the reporter:)

"I am 10 years older and have seen 100 people lynched."

Senator CONNALLY. Let that stand. You know where Arkansas is, do you not?

Mr. RAPER. Yes, sir.

Senator CONNALLY. Did you know that in Pine Bluff on May 5, 1939, a 20-year-old Negro, charged with the assault and murder of a white woman, was removed to Little Rock for safekeeping; that about 3 weeks later the Negro was returned to Pine Bluff for trial, at which time State policemen and National Guard men were on duty to maintain order, at the request of the county officials; that the slayer was given the death penalty? Did you know about that?

Mr. RAPER. Ditto.

Senator CONNALLY. One other case and I will let you go.

At Bradenton, Fla., on August 21, the county officers held a 30-year-old Negro man in an unannounced jail in connection with an attack on a white woman on Saturday night, August 18. Did you know about that?

Mr. RAPER. I do not know about that, not the specific details. I may have heard of it. I cannot know the details of all those cases.

I do have personal knowledge of a good many of those 100 lynchings.

Senator CONNALLY. What do you call "personal knowledge"?

Mr. RAPER. I have communicated with people familiar with 100 lynchings and talked with people who know something about them.

Senator CONNALLY. You said you had personal knowledge.

Mr. RAPER. I mean knowledge that I got from reputable citizens.

Senator CONNALLY. You said you knew it from personal knowledge. What do you mean by that?

Mr. RAPER. Personal knowledge through reputable citizens.

Senator CONNALLY. That is not personal knowledge. Did you see any of these instances?

Mr. RAPER. I did not.

Senator CONNALLY. I did not think so.

Senator WILEY. As I understand your testimony, this information about which you have testified is contained in recommendations for the past 10 years, to prevent lynchings?

Mr. RAPER. That is correct.

Senator WILEY. Very well; it is not important. That is all.

Senator WAGNER. May I ask a question?

Senator VAN NUYS. Yes.

Senator WAGNER. Are you acquainted with the fourteenth amendment to the Federal Constitution, which 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.

Mr. RAPER. Yes, sir; I am.

Senator WAGNER. And it is the concern of the Federal Government that this should be done?

Mr. RAPER. It seems to me it is.

Senator WAGNER. Time and time again that section of the Constitution has been invoked for the protection of citizens of the United States.

Senator CONNALLY. Are you qualifying the meaning of the Constitution?

Mr. RAPER. No, sir.

Senator CONNALLY. That covers life and property both. You say you know what it means?

Mr. RAPER. Yes, sir.

Senator CONNALLY. If somebody steals my pocketbook, I am deprived of the right of property. Would you make that a Federal offense?

Mr. RAPER. Over a period of at least 50 years——

Senator CONNALLY. No. There is no time limit in that question.

Mr. RAPER. If you will not let me answer it, I will not answer it.

Senator CONNALLY. I do not think you want to answer it.

Mr. RAPER. I do.

Senator CONNALLY. Go ahead.

Mr. RAPER. I do not know of any method that has been worked out to provide for that protection from the Federal Government.

Senator CONNALLY. A good many more people lose their pocketbooks than are lynched.

Mr. RAPER. The percentage is a good deal higher, very much higher.

Senator CONNALLY. Have you estimated that?

Mr. RAPER. Oh, no. It is undoubtedly much higher.

Senator WILEY. The record shows that during 1939 there were only three lynchings:

Mr. RAPER. That is correct. That is according to the Tuskegee report. I investigated that subject for 10 years.

Senator WILEY. I am talking about lynchings.

Mr. RAPER. So am I.

Senator CONNALLY. How long did you work for that concern?

Mr. RAPER. The Southern Association?

Senator CONNALLY. Where you investigated lynching?

Mr. RAPER. I began in 1930 and worked full time for 2½ years and half time for 2 years.

Senator CONNALLY. Four and a half years?

Mr. RAPER. Yes, sir.

Senator CONNALLY. And during that time you had personal knowledge of 100 lynchings? Did you say that or not?

Mr. RAPER. No.

Senator CONNALLY. What did you say?

Mr. RAPER. That during the next 3 years I investigated that number of lynchings.

Senator CONNALLY. You investigated 100 lynchings?

Mr. RAPER. Yes, sir. I started in 1930, and also went back into 1929 up to 1939.

Senator CONNALLY. You worked continuously from 1929 up to 1937?

Mr. RAPER. No, sir. I worked in 1930, 1931, and part of the time in 1932.

Senator CONNALLY. You investigated 100 lynchings?

Mr. RAPER. Something like 100.

Senator CONNALLY. I do not understand your table.

Mr. RAPER. The totals are on the right.

Senator CONNALLY. In 1931, 21; 1932, 8; 1933, 28; 1934, 15; 1935, 30. So there were not 100.

Mr. RAPER. Not during that period.

Senator CONNALLY. But you investigated 100.

Mr. RAPER. I investigated some in 1937 to 1939.

Senator CONNALLY. Have you ever been in Texas?

Mr. RAPER. Yes, sir.

Senator CONNALLY. Did you investigate any lynchings?

Mr. RAPER. Yes.

Senator CONNALLY. What year?

Mr. RAPER. 1930 and following.

Senator CONNALLY. You were there?

Mr. RAPER. Yes.

Senator CONNALLY. Did you ever investigate any in Louisiana?

Mr. RAPER. Not personally.

Senator CONNALLY. That is what I mean. Did you ever go to Louisiana to investigate?

Mr. RAPER. Yes.

Senator CONNALLY. Mississippi?

Mr. RAPER. Yes; half a dozen, I suppose.

Senator CONNALLY. I don't want a supposition. How many?

Mr. RAPER. I don't remember.

Senator CONNALLY. Why did you say that?

Mr. RAPER. I would say at least half a dozen.

Senator CONNALLY. All right.

Senator WILEY. But in that pamphlet you do not recommend a Federal act?

Mr. RAPER. No, sir.

Senator WILEY. I understand also that during the last 10 years there have been fewer lynchings in the South.

Mr. RAPER. The record jumps up and down, between 1930 and 1935. In 1930 there were 20; in 1931, 13; in 1932, 8; in 1933, 28; in 1934, 15; and in 1935, 20.

Senator CONNALLY. Go on down.

Mr. RAPER. In 1936, 8; in 1937, 8; in 1938, 6; in 1939, 3.

Senator CONNALLY. The same drop occurred from 1895 through 1915. Then the World War came along, and lynchings nearly doubled in 2 or 3 years. In recent years the number has decreased down to 3 in 1931, and that has happened without a Federal law.

Mr. RAPER. That is true. That has happened without any Federal lynching law. The National Association for the Prevention of Lynching has had considerable to do with that decrease, I believe.

Senator WILEY. Generally speaking, you would say that there has been an improvement in that regard in the South, in relation to lynching, would you not?

Mr. RAPER. There has been some improvement.

Senator WILEY. What would you say as to the fact indicated by the Senator here, showing that there is a decided improvement in the enforcement of law and responsibility of the courts in the South?

Mr. RAPER. There has been some improvement in that regard. I have worked for that improvement.

Senator WILEY. The association for which you are testifying is known as what?

Mr. RAPER. Which association?

Senator WILEY. This colored association.

Mr. RAPER. The Walter White organization?

Senator WILEY. Yes.

Mr. RAPER. The National Association for the Advancement of Colored People.

Senator WILEY. How large is that?

Mr. RAPER. I do not know.

Senator WAGNER. Mr. Chairman, I think it is unfair to say the "Walter White" organization. It is composed of prominent and leading citizens.

Senator VAN NUYS. Walter White is on this list as a witness. You will have the opportunity of interrogating him.

Senator WILEY. I am interested in getting from you some real information about the situation. I am a new Senator here, and I am trying to get some information that will guide me as to what position I should take. Apparently there has been a gradual decrease in lynchings, due to the attitude of public officials, from the Governor down.

Mr. RAPER. I cannot answer that "yes" or "no."

Senator WILEY. What is your opinion? Have there been as many lynchings in recent years as there were before?

Mr. RAPER. Not in the last 4 or 5 years. Before that, as I said, I investigated 100 cases of lynchings.

Senator WILEY. You do not mean to say that you participated in them?

Mr. RAPER. No, sir. I investigated them. I should say there is an improvement in the situation.

Senator WILEY. We are all interested in protecting the whites as well as the colored people. One thing that occurs to me now is the effect of putting the Federal Government into the picture. A great many argue that it is really a local matter, a matter for the local authorities to look after.

Mr. RAPER. I cited a specific case at Augusta, Ga., in the Federal court. The local court could not have handled that situation. My answer here is the same.

Senator WILEY. It is the same in relation to any crime, is it, such as rape, murder, horse stealing, or anything of that kind?

Mr. RAPER. If I had all my records here I could tell you more definitely.

Senator WAGNER. I wonder whether you found in your investigation that when the antilynching bill was pending in Congress in 1938 and was being vigorously pressed by those interested, there was not a single lynching during the first 6 months; whereas in the second half of the year, that is, promptly after the adjournment of Congress, seven lynchings took place?

Senator CONNALLY. What year was that?

Senator WAGNER. 1938.

Mr. RAPER. Well, you see, Tuskegee and other agencies will have a record there.

Senator WAGNER. There were seven in that time.

Mr. RAPER. And I remember that at Gordonsville, Ala., responsible officials asked that no lynching occur, as it had gotten up in Congress.

Senator WAGNER. That was in the press reports.

Mr. RAPER. Yes.

Senator WAGNER. And as I recall, there was not a single prosecution, or even arrest, in any of those seven cases.

(Witness excused.)

Senator NEELY. I move that any witness who testifies here be permitted to testify for a certain number of minutes, and that whether he appears for the bill or appears against it, he be permitted to make his statement in his own way, and that if there is any cross-examination by any member of the subcommittee it take place later, but that during his prepared statement he proceed without interruption.

Senator CONNALLY. In other words, the Senator is suggesting that the witness be permitted to put in anything on earth?

Senator VAN NUYS. No, Senator. Senator Neely's suggestion was that it could be brought out on cross-examination.

Senator CONNALLY. Well, I think we ought to have some rule of evidence. I think we ought to leave it to the chairman.

Senator WILEY. My opinion is that we ought to have the right to question him; otherwise he might read his statement, and he may make a statement that will call for a question at once.

Senator VAN NUYS. Well, we will see if we can get along without asking questions during his statement.

What is your name?

STATEMENT OF CHARLES GRESHAM MARMION, JR., ASSISTANT RECTOR, ST. ALBANS CHURCH, WASHINGTON, D. C.

Mr. MARMION. Charles Gresham Marmion, Jr.

Senator VAN NUYS. And where do you live?

Mr. MARMION. My residence has been in Washington for the last 3 years.

Senator VAN NUYS. And connected with what church?

Mr. MARMION. St. Albans Church, Massachusetts Avenue and Wisconsin Avenue.

Senator VAN NUYS. As rector?

Mr. MARMION. Assistant rector.

Senator VAN NUYS. Now, these notes have been handed to me by different witnesses, and they show that in 1935, in Colorado County, Tex., you attempted heroically but unsuccessfully to prevent the lynching of two Negro boys. Is that correct?

Mr. MARMION. Yes, sir.

Senator VAN NUYS. Will you tell the committee about that, in your own way?

Mr. MARMION. I may say I am not an expert on that; but I can testify to what I observed, as living in the county until a few days after it happened.

Senator VAN NUYS. All right; proceed.

Mr. MARMION. On October 16, 1935, a young white girl about 18 or 19 years old was found, apparently drowned in a pool of water near the Columbus County seat. Some time later two colored boys, Bennie Mitchell and Ernest Collins, aged 15 and 16, were taken into custody and accused of the crime. I understand that a written confession was secured from these two boys; I cannot testify that it was so or not. It appeared in the paper that it was, and one of the county officers told me that it was.

Those boys were taken to Houston, Tex., 35 miles away, for safekeeping, and on the night of November 12 they were brought back by the sheriff and a deputy sheriff of that county to go on an examining trial the next day in Columbus. I happened to be in Houston on November 11, Armistice Day. I lived there; I am a native of Texas and lived there until I was 31 years of age. And I was there visiting my parents.

I got to Eagle Lake the night this lynching occurred, and was talking to one of my parishioners, and the parishioner asked me, "Did you notice that the town seemed to be very quiet?" And I said, "No; why?" And the parishioner said, "All of the men have gone over to Columbus to help lynch those two boys." And I said, "Excuse me, please." And I got in my car and drove to Columbus, 16 miles away. I saw nothing unusual there, except that there were few people on the street, and two filling stations that were usually open at that time—it was somewhere around 8 o'clock—were closed. And I went to another filling station and asked the man if he knew anything about a lynching. The proprietor evaded my question, and said he did not. And I went to Columbus, where I was as well known as at Eagle Lake. And I asked a woman that I saw there if she knew anything about it. She said she did not. That she had heard her husband tell about a lynching in a certain grove of trees near town.

And I drove to the county jail, thinking if there was going to be a lynching they would storm the county jail. The county jail was dark. And I went all around the town five times trying to find out something. And I had just about given it up as a false alarm. I had an appointment in Eagle Lake that evening; and on the way I saw a string of lights coming from Alleyton. The old road from Eagle Lake to Columbus was on Route 90. But this was a round-about road from Eagle Lake to Columbus. And so I said, "Well, if there is to be a lynching, this is evidently the crowd." And so I got in line with the cars as close as I possibly could. They drove about 3 miles outside the town of Columbus, and stopped near a live-oak tree. I parked my car as quickly as possible, and rushed under this tree. Under this tree there was a car, a Ford T-model, an old car. The lights were turned on, and there were groups of men around it putting ropes on these two boys. I got up on the fender of the car and asked the crowd to listen to me. The newspapers estimated the number in the crowd to be from 300 to 500. I think it was closer to 300. Some of the people objected, and some said, "Let us hear him and what he has to say." I could not tell you what I said, owing to the excitement. I asked these men to let the law take its course, and not let the county have this lynching on its hands. People began booing and yelling at me. One fellow yanked me off the car. By this time they had taken one of the boys off the tree and put him on the land. I went up to one of the men and asked him to desist, and to turn these boys back over to the sheriff. He paid no attention to me, and about three or four men came between him and me.

These boys were pleading for mercy all of this time. The crowd did ask them if anybody else was implicated, and they did look for somebody else and they called some name.

They pulled up one of the boys, and apparently his neck was broken immediately. The man who was handling the rope, the man I approached, evidently bungled his job, because they pulled this boy up and he grabbed hold of the rope, or, at least, the hanging had no effect; and so the three men grabbed hold of his legs and continued to jerk down on them, in the most horrible manner I have ever seen, until this boy was either dead or unconscious. I presume his neck was broken. There was nothing more that could be done.

I left in disgust and horror. I drove back to a little house that is used as a parish house, and wrote my sister a letter, so that in case my name should get in the papers my family would not be worried; and I drove back to Eagle Lake to see if I could get there in time for the meeting.

The next day I drove to Columbus to see if I could get a notice in the paper. I was supposed to be in Eagle Lake Tuesdays and Wednesdays. So I drove immediately back to Eagle Lake. The thing that I learned afterward from the newspapers and the people was that when the sheriff reached Eagle Lake he thought that, if there was going to be an attempt to lynch these two boys, maybe they could forestall it by taking this side road, which was 4 miles farther than Highway No. 90. So that they left Eagle Lake. As soon as they left Eagle Lake some cars started after them. So that when they got to the Colorado River, near Alleyton, they found it blocked ahead of them, and the three or four cars that had been

blocking the road were there, and the sheriff told me that he looked down the barrel of a double-barreled shotgun. But the newspaper said these men who accosted the sheriff were masked, and that their license plates were covered. They demanded these two boys, took the pistols away from the deputy and the sheriff, took the keys of their car away from them and left them stranded at the bridge, while they took these two boys and went to Alleyton. The county attorney, a man named Moore, came out with a statement either that day or the following day or the second day, stating that he did not consider this mob violence; that it was the will of the people.

I have lived in Texas all of my life, and I do not think it was the will of the people who really try to live by the right standards—although I am afraid I will have to admit that I believe probably the best citizens in town were in that mob. The county judge said he deplored the lynching. These statements appeared in the newspaper; I did not hear them. And I read these statements in the Houston Post and the Houston Chronicle principally. And the judge said that, while he deplored lynching, these two boys could not be adequately punished because of the fact that they were adjudged to be juveniles under the Texas law.

And I might say that there were women and children in the mob, as well as men; and I feel that the effect it had on the white people was just as bad and as horrible as the crime itself. The parents of these two boys did not claim the bodies, presumably out of fear. I did not talk to them. I did not know personally any of the persons connected with this; but the newspapers hinted, and from the attitude of the people of the town one gathered that the parents of these boys did not claim the bodies of these boys because of reprisals against them, and therefore the bodies of these two boys were buried by the county. According to the newspapers, the justice of the peace said he was going to make an investigation; but he also said he did not think he would have any luck in finding out who was there and who perpetrated this crime. There was considerable furore raised by other people in the State of Texas, and by certain newspapers, newspapers catering to both white and colored population, that something must be done. The Governor sent a ranger to the city; he came there on Sunday; I cannot tell you whether it was the first Sunday after the Tuesday of this occurrence, or whether it was two or three Sundays afterward, but I am safe in saying it was within 2 or 3 weeks. I do not know what investigations he made in Columbus. I know he went to the treasurer of my church and asked him to find me. The treasurer called me up and asked if he could bring this man up. I said "Yes," and he did bring this man up.

And the man asked me if I could identify any of the people in this mob. I told him I could not. There were three people I thought I recognized, but I could not take an oath that those three were present, and I could not identify them positively; so I had no right whatsoever to give their names. One of those persons, if it is true—one of them I know was a girl 16 years of age, and one of the other persons, if I am right in my identification, was a well-known businessman. Another was a young man. But as I say, I could not testify to the actual identity; therefore I had to say to this ranger that I could not positively identify anybody, and so I gave him no names.

People asked me if I thought it was the will of the people. I believe it was the will of a certain number of people. I might say that later on editorials appeared in several Texas newspapers that the chamber of commerce of this town wrote a letter to at least two Houston papers saying they were tired of listening to criticisms from other people, and they wrote a defense of the action of this mob, saying that because the State law of Texas says that a juvenile is any person under 17, these two boys could not be punished except by sending them to the reformatory until they were 21 years of age, and therefore the blame should be placed upon the legislature which passed this law—I do not know which legislature of Texas passed it—that was the reason they had taken the law into their hands. This statement said it had been approved by the board of directors of the local chamber of commerce, and was signed by the president or secretary of the chamber; and it appeared in the Houston Post and the Houston Press, and other papers in the State.

My own opinion is, from what I have gathered, that if these boys—I am not criticizing anyone present, understand. I served those people down there for 8½ years, and I have many friends there, probably many friends among that mob; but I believe had I been sheriff and had had the notion that I was taking those two boys for protection against a mob, I would have wanted more than a deputy and a couple of pistols to take care of them when I got back.

I believe also that this proposed Federal law would give an adequate impetus all over the United States to having this protection immediately. And my observation has been this: That once a group of people have formed a mob and are excited to the extent this group was, the Angel Gabriel himself could not stop them. There is no preventing or stopping the mob after they have gotten hold of their victims; I don't think there is anything you can do when they have gotten hold of the persons; and the only thing you can do is to take all precautions. Now, more and more we must see that those precautions are taken by the officers of the county. But I believe—and I am sorry to say it as a southerner and as a Texan—I believe that the spirit of tolerance has not yet reached the point where some such law as we are testifying about now is not necessary.

I believe that such a law would not deprive the States of their rights, but would allow them to take the necessary precautions. The bishop of my church, some time previous to this occurrence, had asked the Governor to come out against lynching and say that if there were any lynching at all he himself would see that some investigation was made and that the responsible persons would be punished. He made no such statement. He sent one ranger down there. And this ranger said to me, "It looks like nobody down there knows what happens; everybody says, 'George Jones is the man who told them about it.'" And the newspapers reporters said if they asked anyone, "Where did you get this information?" they would say, "Well, I got in from George Jones." And where is George Jones? There was no desire on the part of anybody to get testimony. I think if it had been a mere matter of revenge, or if it had been a matter of wanting to see these fellows get the punishment they should get—and I think the crime with which they were charged was a horrible one and certainly should be punished—if that was all they desired to have done, I do not think they would have gone through the county that

day and invited people from all over the county to come to Columbus that night.

And the sheriff himself made the statement to the newspapers that, after he had gone to the houses near this bridge, where he had been left off and left out, he went to the scene of this lynching and in the crowd were people from all over the county.

Now, I have no interest in this case at all, save as a Christian minister who believes in the doctrines he preaches. I was asked to come here and tell what happened on November 12, 1935, in that county. I was asked by Walter White, who is secretary of the National Association for the Advancement of the Colored People, which is, as I understand, an association composed of both white and colored people. I am not a member of that organization. I have seen Mr. White three times within the last 10 days, I think, and two of those were within the portals of this building. I paid for my own gasoline with which to drive here—a distance of 5 miles, and have had no expenses whatever, and no one has said they would pay my expenses for coming down here.

But I am glad to give my testimony, because I believe as a citizen of the United States that this law is a good thing. I have lived in the South practically all of my life, except for the last 3 years, and therefore I am well acquainted with the spirit there; I believe the attitude of the South today toward the Negro is getting better and better; but I do not believe it has reached the point where it is what it ought to be, and I believe the proposed law would be a safeguard on the lives of people. But more than that, I believe it would also contribute to a better feeling between the whites and the colored of the South, which is needed for the benefit of both races.

And I also believe that the right-thinking people of the State, the people who do stick to that in my native State—that the majority of them are for this bill.

That is about all I can say; but if I can answer any questions I will be glad to do so, to the extent of my ability.

Senator VAN NUYS. Thank you. Have you any questions, Senator Neely?

Senator NEELY. No.

Senator VAN NUYS. Have you any, Senator Wiley?

Senator WILEY. No.

Senator VAN NUYS. Senator Connally?

Senator CONNALLY. Yes. Doctor, were you living at Eagle Lake or Columbus at the time?

Mr. MARMION. I had charge of Christ Church, Eagle Lake, and St. John's Church at Columbus; and I had a room at each place. I stayed at Columbus three days and at Eagle Lake 3 days a week.

Senator CONNALLY. That is a small county in a very densely populated section?

Mr. MARMION. Yes.

Senator CONNALLY. You were well acquainted with the people both in Columbus and in Eagle Lake?

Mr. MARMION. No, not all of them.

Senator CONNALLY. I know not all of them, but——

Mr. MARMION (interposing). I knew the businessmen of both towns pretty well, yes. But I could not name all of them.

Senator CONNALLY. But you were living in one or the other place at the time?

Mr. MARMION. Yes.

Senator CONNALLY. And everyone you knew was a resident of one of those towns?

Mr. MARMION. Yes.

Senator CONNALLY. And you naturally saw them at the church or in business, and had other contact with them, did you not?

Mr. MARMION. Yes.

Senator CONNALLY. Of course, I condemn just as heartily as you do this lynching in November 1935—was it?

Mr. MARMION. Yes.

Senator CONNALLY. They ought to have been tried. Doctor, have you read this bill?

Mr. MARMION. Yes, sir; twice.

Senator CONNALLY. Do you realize that under this bill there was not a single person in that mob that could be punished?

Mr. MARMION. That may or may not be true.

Senator CONNALLY. Now, you have read it twice?

Mr. MARMION. Yes, sir.

Senator CONNALLY. Is it true or not? I want to see if you understand the bill.

Mr. MARMION. I understand the bill.

Senator CONNALLY. Well, do you know that not one of the persons participating in this lynching could have been punished?

Mr. MARMION. I doubt the correctness of that statement.

Senator CONNALLY. Well, here is the bill. Just take it and read it.

Mr. MARMION. I have read it.

Senator CONNALLY. Now, point out where it would punish anybody in that lynching?

Mr. MARMION. Well, I think it would have the effect of being a deterrent.

Senator CONNALLY. Well, but I say under this bill could any person participating in a lynching be called into a Federal court and be punished?

Mr. MARMION. I am not interested in punishing anybody.

Senator CONNALLY. But we want a law that will accomplish something?

Mr. MARMION. I think if such a law had existed greater precautions would have been taken.

Senator CONNALLY. By whom?

Mr. MARMION. By the sheriff and the deputy, to see that they were brought to safety.

Mr. CONNALLY. Now, the sheriff or his deputy did take those boys 80 miles to Houston. How long did they stay at Houston?

Mr. MARMION. I suppose about a month.

Senator CONNALLY. Well, of course, the sheriff may have been at fault in bringing them back: but he thought possibly that the passions of the neighborhood had died down; and he did bring them back to have them examined for trial.

Mr. MARMION. Yes, he brought them back for an examining trial.

Senator CONNALLY. Well, then, they did bring them back for the purpose of having them examined and a trial?

Mr. MARMION. Yes, sir.

Senator CONNALLY. You also said that the sheriff and his deputy, in taking these prisoners, did not travel the regular highway; they went around a side road, did they?

Mr. MARMION. Which was a perfect trap. I am just making that as a statement.

Senator CONNALLY. No; but I am talking about the sheriff. Do you think he and his deputy knew there was a trap?

Mr. MARMION. No.

Senator CONNALLY. So the point is, under this bill the sheriff would not have been responsible if he had not been criminally negligent in trying to protect them?

Mr. MARMION. That may be true enough.

Senator CONNALLY. Well, you have read the bill. It is true, is it not?

Mr. MARMION. If such a thing is enacted, I think it would have a moral force to make the county officials take even greater precautions. Now, you and I are both in favor of preserving human life.

Senator CONNALLY. Yes. I have helped to preserve it.

Mr. MARMION. All right; that is exactly my idea of what the bill would do.

Senator CONNALLY. How long did you spend at the scene of the mob?

Mr. MARMION. I spent not more than 15 minutes, because I drove over and got up on this car as soon as I could.

Senator CONNALLY. Well, you were a resident there, and you were very close to these persons, and one of these men jerked your arm off the fender. They were not masked then, were they?

Mr. MARMION. No; they were not masked then; I did not say they were masked. I said the sheriff said they were masked.

Senator CONNALLY. I am not talking about what the sheriff said. You saw it all. They were not masked?

Mr. MARMION. They were not masked.

Senator CONNALLY. And you lived in one of these towns all the time and knew the county. And you visited the scene, and one of these men came up and jerked you off the fender, and yet you say you could not identify the men in that crowd?

Mr. MARMION. No; there were the lights of the model T Ford shining.

Senator CONNALLY. Yes; but you could not identify these people?

Mr. MARMION. No, sir.

Senator CONNALLY. But let us suppose that everybody else that was there present in the mob was subject to those influences and that they did not want to do anything and did not want to know anything. But you were the one man there that was against mob violence?

Mr. MARMION. Do not make me that superior. I think there were many people who were against it. There was the girl.

Senator CONNALLY. Well, I am talking about the crowd. You are talking about the girl 16 years of age. She probably went there out of curiosity. She did not hold the rope, did she?

Mr. MARMION. No; but it did not do her character any good.

Senator CONNALLY. But you were not there to participate in the mob?

Mr. MARMION. No.

Senator CONNALLY. Now, suppose they were all participating in the mob except you, and you were the only man anxious and willing to testify; and yet if you were called into court you could not positively identify a single person, could you?

Mr. MARMION. I could not identify a single person.

Senator CONNALLY. So that there would not have been any case?

Mr. MARMION. I do not know. They could have subpenaed other persons.

Senator CONNALLY. Well, you said that George Jones could tell about this; but you did not see anybody you could testify about at all. That is all.

Mr. MARMION. I would like to make this statement, Senator, if it is all right.

Senator CONNALLY. Say what you please. I am not hostile to you.

Mr. MARMION. I think you and I will both have to admit, although we do not like the situation—I think we will both have to admit that the prevailing sentiment would not be very strong in most of the Southern States and communities, in the rural districts, to convict such a mob.

Senator CONNALLY. Well, if they had witnesses like you who could not identify anybody.

Mr. MARMION. Well, I just happened to be one.

Senator CONNALLY. Well, you were there and saw it all; you were right in the vortex of it, and yet you could not tell.

Mr. MARMION. I am supposed to have known the people, yes; and I can say that there were two lights of a Ford car shining on these men; that these men were standing up against those lights; that they did not cast a very bright light. That I did not see the faces of anybody there. I did get a glimpse of one man, but I could not swear that was he, and the reason I could not swear that was he was that some——

Senator CONNALLY (interposing). Well, the shining effect was just the same as on this girl, was it not?

Mr. MARMION. Yes.

Senator CONNALLY. You did not have any difficulty about that?

Mr. MARMION. Yes; but I can say that out of 10 people 5 might identify——

Senator CONNALLY (interposing). Well, I am talking about your testimony. You swore that you were there. You saw the mob and you saw this girl. You thought or knew that she was 16 years' old. You saw the man that jerked you down and saw the faces all around; and yet you say you could not identify a single person in that mob. Is that true?

Mr. MARMION. Yes; that is true. I went into that mob, not with the idea of identifying anybody, but with the idea of trying to keep them from committing a sin.

Senator CONNALLY. A very commendable action on your part.

Mr. MARMION. You do not have to applaud me.

Senator CONNALLY. But I think your eyesight ought to be improved.

Senator VAN NUYS. Senator Wiley?

Senator WILEY. I am interested in this line suggested by the Senator from Texas. You made the statement that the people in those towns apparently were not very much interested in getting convictions for mob violence. That is true, is it not, in the community?

Mr. MARMION. I think the prejudice is great enough in a large enough community for me to make that statement.

Senator WILEY. Well, if this bill were a law, you would have, you would have them before a Federal judge, tried by a jury of Southern men and women. Is that not true?

Mr. MARMION. Probably true; yes, sir.

Senator WILEY. You made the statement that if this law were put into effect it would operate as a deterrent. Now, as a starter—and I am wondering; and I want to get to something else. Fundamentally, if this bill became law would it not operate as a deterrent to the crime that set the mob in action, or would you have more of those crimes?

Mr. MARMION. I do not think you would have more of those crimes.

Senator WILEY. Well, do you feel certain about that?

Mr. MARMION. Yes, sir; that is my conviction.

Senator WILEY. Do you think that we human beings are creatures of fear, too much at times; but many crimes are not committed because of fear of the consequences?

Mr. MARMION. That is right.

Senator WILEY. Now, I am asking you, if that would have any place in this picture; whether or not it would have any effect if it were generally known that the Federal Government might step into the picture?

Mr. MARMION. I would call to your attention another law of psychology today, and that is that people respond when you trust them, and this at least would be saying to the people, to the colored people, or any group of people that might want to commit such a crime, "We are trusting you. This law is protecting you. We are trusting you to do your part to cut down on the number of these crimes." I believe it would have just as much effect on that side if such a law as you suggested were passed—that it might discourage rape or attempted rape.

Senator WILEY. Now, if you are going into psychology——

Mr. MARMION. I am not a student of psychology. I have observed that in my own life, and it has come out in that way.

Senator WILEY. I ask you, as a wanderer, what the effect would be if southern people, who have stood all the time for State rights, who might feel that in this case the Government was trying to go in and interfere with what they considered their State right of action? Now, you are answering as a southerner.

Mr. MARMION. I am answering as a southerner, but I am answering first of all as a Christian.

Senator WILEY. I hope you are.

Mr. MARMION. There is a part of the Constitution that says that each person should have equal rights in this country.

Senator WILEY. Well, we will not argue it. I think there is something to that effect.

Mr. MARMION. Yes; I think so too. Why, then, is it not the responsibility of the Federal Government to see that the people do have that? You must remember that according to this bill, if the States took the proper precaution and made a thorough investigation, and made an effort to punish anyone who was a perpetrator of mob violence, the Federal Government would not even step in at all. So that I do not see how you can cry, "States' rights."

Senator WILEY. I brought that up because of your suggestion of psychology. When you talk of rights that they have fought for

and bled for in certain fields, and all at once they come in and say, "You cannot do that"—especially when conditions are improving—I was trying to see your approach to that situation.

Mr. MARMION. Well, conditions have improved. I am a minister, but they have not improved to the extent that I am giving up preaching. And I think they have a right to be better; and I am as much of a sinner as they are. I look upon myself as responsible for the things in the South. There are plenty of things in the South that I am proud of. Do not talk to me of Texas—I will talk until midnight. But I believe the thing you ought to do if you want to help your State is to take the thing as it is.

Senator WILEY. All that we are trying to do is that we are here trying to get your convictions on this bill; and I appreciate your remarks. But partisanship on the part of a clergyman does not help the situation when we are reaching out for the truth.

Mr. MARMION. May I say that, so far as partisanship is concerned, I have changed my politics.

Senator WILEY. You are a Republican like myself, then?

Mr. MARMION. No; I do not happen to be a Republican; although if I thought the Republicans were right I would vote for them.

I would like to say this—that at one time I had just as much prejudice against the colored race as a lot of people do. But I have learned of certain things, and I have changed my mind;; and the things that I am saying here as to what I believe about this bill are my personal convictions after thinking the things through from what I believe is the Christian standpoint.

Senator WILEY. I do not doubt that, Doctor. Four centuries ago the Protestants and Catholics of Europe had convictions, and they burned each other at the stake because they thought it was God's will.

Mr. MARMION. That is true.

Senator WILEY. Now, we do not want to do that. But we are trying to get light here; that is my idea here. I have no prejudice against the colored people; I have no prejudice against anyone, not even a clergyman. I am here trying to find a way out, not to get into an argument.

Senator VAN NUYS. Is that all, Senator?

Senator WILEY. Yes.

Senator WAGNER. May I ask one more question? Doctor, we were talking about this question of States' rights. Perhaps I can best illustrate what I am trying to convey by an actual case where a person is tried in a State court before a jury. That person is convicted; and that trial and procedure showed that he did not have the equal protection of the laws that other people have. In that case, where the individual claims his rights under the Federal Constitution are violated, he is entitled to the equal protection of law. In the *Scottsboro case* there was a conviction and the case went to the United States Supreme Court; and that Court having determined the question whether or not that trial was conducted so as to give that individual the equal protection of the law—when they found that the Federal Constitution had been violated, a new trial was directed in the *Scottsboro case*. So that wherever there is a judicial proceeding anywhere, the United States Supreme Court can always review it to see whether the Federal constitutional provision has been violated. But in the case of a lynching as we have it now

there are no proceedings—upon which to pass judgment. So that when we are talking about the concern of the Federal Government, that is one of the primary concerns of the Federal Government under the Federal Constitution, adopted by all the people of the United States—that every citizen within any State is entitled to equal protection.

Mr. MARMION. Senator Connally, did you want to ask me a question?

Senator CONNALLY. Senator Wiley asked you about the enforcement of the law, and you said under the Constitution everybody had equality. I agree to that. Now, if this girl had not been murdered brutally as you say—and I do not mean by that to justify the lynching; but if she had not been murdered, you do not think there would have been any lynching there, do you?

Mr. MARMION. I do not know. I do not know of any reason why there should be.

Senator CONNALLY. Well, you were there. Do you think there would have been any? Do you think they would have been lynched if they had not thought they had murdered this girl?

Mr. MARMION. Yes; but you understood that I am talking about what would happen under the law.

Senator CONNALLY. I am just trying to get your viewpoint. Do you think if they had a Federal law it might have prevented the lynching but would not have prevented the murder of the girl? Did she not have the same rights? Why should not the Federal Government come in in the murder in the same way as in the lynching?

Mr. MARMION. Do you want my answer to that?

Senator CONNALLY. Yes.

Mr. MARMION. There is a distinction you overlooked.

Senator CONNALLY. I am asking you.

Mr. MARMION. Predominantly, in such a neighborhood as that that girl would have gotten her rights.

Senator CONNALLY. Would you say that even if she was dead? She was murdered.

Mr. MARMION. Well, these boys were brought to trial, were they not?

Senator CONNALLY. I do not know.

Mr. MARMION. But you just made me state that the sheriff brought them back from Houston.

Senator CONNALLY. Well, you say if there was a Federal law against the crime it would have prevented it?

Mr. MARMION. No; I said only lynching.

Senator CONNALLY. Well, you say the moral effect of this statute—that it would have a moral effect in making everybody quit mobbing? Now why not a Federal law against murder, so that there would not be any occasion for lynching?

Mr. MARMION. Will you let me answer that?

Senator CONNALLY. I hope you will.

Mr. MARMION. Because the universal horror at murder anyway is so great that a person will be brought to trial anywhere in the United States; but I do not know anywhere about a personal horror at the taking of the life of an underprivileged person in some place, be he black or white, which would make the perpetrators of any crime against him absolutely come before the court. Now if you had someone who had done something against you, and you were in a com-

munity which was predominantly of your own people, you would be pretty sure of getting justice if the person could be apprehended. If on the other hand you were in a minority, even though the law was on your side, you would not seek the chance of getting law and justice as you otherwise would; and I think that is the distinction, under that law.

Senator CONNALLY. Well, I am against a Federal law against murder, as well as everything else. You knew that the Federal Government had a hard time enforcing prohibition, did you not?

Mr. MARMION. You understand, Senator, that I am not a lawyer.

Senator CONNALLY. You do not have to be a lawyer; you know whether the Federal Government had a hard time enforcing it?

Mr. MARMION. It could have.

Senator CONNALLY. It was a Federal law. Did everybody quit as soon as the Federal Government took it over? You say everybody will quit lynching just as soon as the Federal Goverment takes it over.

Mr. MARMION. Well, that is true of murder.

Senator CONNALLY. Let me ask another question. Did you know there was not any lynching in Texas in the year 1939?

Mr. MARMION. Yes; and I am glad to know it.

Senator CONNALLY. Did you know that there was none since 1938?

Mr. MARMION. To the best of my knowledge that is true.

Senator CONNALLY. And then, because those people who are charged with responsibility——

Mr. MARMION (interposing). Well, it is not because if they don't do it the Federal Government may?

Senator CONNALLY. Yes; you are impugning their motives. You say they are not honest in trying to prevent lynching, but are afraid because the Federal Government may get them.

Mr. MARMION. Senator, I am not arguing with you.

Senator CONNALLY. Well, you said that was the cause—I mean that kind of a fallacy that makes people think everybody else is crooked if they do not agree with them. I think these officers that are trying to enforce the law are doing it from honest motives in wanting to enforce the law. Do you still think it is because of fear of the Federal Government? Or is it the other?

Mr. MARMION. I think it is both. I am not accusing the State or county officers of any State of not wanting to do their duty; but I do think you have to take into consideration the course pursued by some of them.

Is that all, Mr. Chairman?

Senator VAN NUYS. That is all, thank you.

(Witness excused.)

Senator VAN NUYS. Now we will have time for one more short witness.

State your name to the committee.

STATEMENT OF G. F. PORTER, DALLAS, TEX.

Mr. PORTER. G. F. Porter.

Senator VAN NUYS. You are connected with Wiley Junior College, at Dallas, Tex.?

Mr. PORTER. Yes, sir.

Senator CONNALLY. The main college is in Marshall?

Mr. PORTER. The main college is in Marshall.

Senator VAN NUYS. Are you the head of the college?

Mr. PORTER. No; Mr. M. W. Tobin is president. I am merely in charge of the branch in Dallas.

Senator VAN NUYS. These notes say that you want to testify about an assault on you individually by a mob in Dallas; by a mob in 1938 when you sought to perform a duty in jury service?

Mr. PORTER. That is correct.

(Discussion off the record.)

Mr. CONNALLY. I do not have any objection to this. But it is extraneous matter. It has nothing to do with any lynching.

Mr. PORTER. I was actually lynched.

Mr. CONNALLY. Well, you are still alive?

Mr. PORTER. Well, it says here in this bill, "maimed or lynched." It was in 1938, in Dallas.

Senator VAN NUYS. I suppose we can weigh the competency and the relevancy as a jury would.

Mr. PORTER. I want to say this: that the mob has haunted me all my life.

Senator CONNALLY. I thought you were going to testify about 1938?

Mr. PORTER. I am. You see, I am one of the million Negroes in Texas. I am one of the two-fifths of the population of the South. And I want to show our psychology and our feeling toward the matter; because I think that ought to be considered in this bill (H. R. 801).

As I started to say, the mob has haunted me all of my life. The most vivid recollections of childhood were in Yazoo, Miss., when I saw a mob take a Negro by our house to lynch him.

A few days before that, my father made a speech in favor of prohibition. And they said a mob was coming up the hill to hang him. I went to the mayor and I went to the sheriff of the county, and told them what had happened. They said, "What do you expect us to do?" I said, "I do not want you to do anything. I just want you to let them know that if they come they will get a warm reception."

That made an impression on me.

In 1931 I was called on jury service, under Judge Kimbrough, in his court. Dan Horiston was sheriff. Judge Kimbrough was fine; but it was through the inciting of the sheriff's deputies and the bailiffs that the jurors themselves became so incensed that on the third day they came to me and said, "We have tried by every means to get you out." I was on the fourth floor of the Dallas courthouse. They carried me off the grounds, and they said, "You get off of these grounds. If you return here we will lynch you."

I went over to lawyer Turner's office, a Negro lawyer, and I told him they forcibly ejected me; but I said, "Turner, I am going back." And I went back and I went into Judge Kimbrough's court. There I remained; and at the end of the court session on the third day Judge Kimbrough insisted, over my protest, that I be excused.

In 1936, I was again called to jury duty in that court; and R. D. Schmid was sheriff. And they made it so unpleasant for me that I left. But in 1938 when I was called—and I want to read to you what the Dallas Morning News said editorially about it, just a brief statement:

The old world is at loggerheads over minorities. The Negroes are our minority problem. They live in Texas in somewhat the same proportion to

total population that the Sudeten Germans do to the whole of Czechoslovakia. And what happened to the representative of the Negro minority in Texas is on a par, for ruthlessness, for cruelty, and for lawlessness, with what is happening to the oppressed Jewish people or minority in Germany.

"We condemn others. Shall we not be condemned?"

That is said editorially in one of the most conservative papers in the whole of the State of Texas and the Southwest. And, incidentally, it supports our junior Senator from Texas.

Senator CONNALLY. I have not any quarrel with that statement. I have tried cases with Negroes on the jury. I have no objection to them, if they are honest and behave themselves.

Mr. PORTER. As I was called to the door, and Judge Paine L. Bush was in the anteroom, and he told us what was necessary and what was not necessary. I was forced to appear; because I have here [indicating] a photostat copy of what is on the summons; and the last paragraph is article 2121, which reads:

Any defaulting juror notified, who without reasonable excuse fails to be in attendance upon the court in obedience to said notice, shall be fined not less than $10 nor more than $1,000.

And so I presented myself, and I was sworn in with the rest of them. And after the judge and the sheriff had admonished us, and the judge had tried to get enough white jurors and had refused to excuse some, because he said, "We will not have a large enough panel to last"; and the sheriff left. And while the clerk was saying, "You are excused for lunch; be back at 2 o'clock," Fred Army, the deputy, came to the jurors and said, "Give me that letter that I sent you several days ago." All of them gave him the letter except myself. And he made them leave at 11 o'clock, and I returned at 2 o'clock, because I was a juror. When I returned at 2 o'clock, he tried to prevent me.

And I went to get my pay, and I stood with four men and the witnesses—one of them is in the house now, that this is going on. He said, "Pay these men." And I said, "For what?" And he said, "You are excused." And I said, "You cannot excuse me. Nobody but the judge can excuse me." It ended by their sending it to Judge Bush, and he said, "Go back to Mr. Army and settle it, and if you cannot settle it come back to me."

I went back there to settle it, and then I went to Judge Bush's courtroom, and he said, "Come on here and take your seat in the jury room." I did that. It went on without any particular sensation on that day, in the first division; and on the next day it went on without anything particular. And on the third day a young man came into the courtroom, and he said to me, "Unless you get out of here something is going to happen to you." And he was just a shaver of a boy; but I said, "Are you one of them?" And he said, "Yes."

And I went to Mr. Army, who was in direct charge of the jury room. And I said, "Listen. It is your place to protect me. I am in the hands of the judge and the sheriff. If you cannot protect me, it is your place to put enough men here to protect me—if you have to have a thousand men to do it." And he said, "All right, I will do it." And he immediately left me and was gone about 20 minutes. Just then Dr. Howell, one of my witnesses, stepped into the hallway and evidently they did not want to attack me before him.

At that time, there were two men on the sidewalk looking on; and after about 10 minutes in came the same young fellow, and

he said—and, by the way, Mr. Army, the man who was supposed to protect me, had gone, conveniently—he said, "I have come to take you out." I jumped up and started toward the desk where the clerk was seated, and to a small room where there were several men, presumably court officials of some kind, deputies and bailiffs, and I yelled to them that I was being assaulted. I started to run and screamed, "They are trying to harm me." I cried that to the clerk. He paid no attention but went on writing. The other men in the room paid no attention.

Two men grabbed me and took me out of the court room, hurled me down the steps and hurt this arm [indicating]. And I started to go back, and every time I started to go back a dozen men on the steps would say, "Don't you dare to go back in th . If you do we will kill you." And I said, "I will go back in there if it is my last step."

And I went back and went into the jury room and took my seat.

That is not all. On the street there were a number of people, including a plainclothes policeman. And I said to the policeman, "You go and get Mr. Army"; and he went and brought Mr. Army. And then Mr. Army sent me to Judge Sarah Hughes' court room, where a jury had been sent out. On the way up I was very much injured.

And this man took me up to Judge Paine L. Bush's private room, and he said, "Judge Bush, this man has been snatched out of the room and has been thrown down the steps and hurt."

Judge Bush said, "Don't bother me." They said, "But this man has been injured." And the judge said, "I cannot help you; do not bother me."

And I asked them to get me a bottle of Coca-Cola! I asked the deputy sheriff, and I asked the correspondent of the Morning News, and they would not do it.

Finally, my friends came down there; and one of them went and got me a bottle of Coca-Cola.

That, in short, is the story of what happened to me.

Senator CONNALLY. Probably we need more Coca-Cola instead of this bill.

Mr. PORTER. No; we need something to use for those who have the administration of the law in their hands. Because here is the situation:

I do not care what anybody else thinks. Two-fifths of the population of the South are Negroes; and they think we do not get justice in the courts. We feel that if we have a case where a white man is concerned, he always gets the big end of the horn and we get the small end. We feel that there is no other way to get it, unless we can get some Negroes on the jury. That is our feeling about it. And as to this mob violence, we have been cowed and crushed so much that we feel that the whole of the South is one big camp for the intimidation of Negroes. And that is why we ask you to pass this bill to prevent lynching, as being the greatest un-American act that takes place in this country.

Senator VAN NUYS. Have you any questions, Senator Wiley?

Senator WILEY. You have looked at this bill; have you?

Mr. PORTER. Yes.

Senator WILEY. What provision of it would apply to the situation that you have described, where one or two men threw you downstairs and you received no relief from the court?

Mr. PORTER. It would not come through the court in my town; because the mob consisted of more than that, because there were at least a dozen that laid their hands on me and kept pushing me back. They were all part of one aggregation. So I hold that there was a lynching in Texas in 1938, and that I was the victim.

Senator WILEY. Well, I must have misunderstood you. Was there any real lynching?

Mr. PORTER. Well, I was maimed. The bill says if you are maimed or killed; if you are killed it gives that to your family—I hope I am not in error.

Senator VAN NUYS. Under the civil liability of the municipality or county, or whatever it was?

Mr. PORTER. Yes, sir.

Senator WAGNER. You are sure that that treatment was accorded you because of your race?

Mr. PORTER. Absolutely; because they discussed it with me; Mr. Army discussed it with me.

Senator WILEY. Did you do anything to provoke it at all?

Mr. PORTER. Absolutely nothing; absolutely nothing. They all said I acted the gentleman all the way through. I did not lose my temper or have any heated discussion with anyone. And, by the way, this man Walter Miller who guarded me is reported generally as being a hanger-on there at the court.

Senator CONNALLY. He is not the deputy sheriff?

Mr. PORTER. No; just a hanger-on.

Senator CONNALLY. Not an official?

Mr. PORTER. No, sir; not an official.

Senator CONNALLY. You know that there were no lynchings in Texas in 1939; do you not?

Mr. PORTER. I want to say this: The record is absolutely incomplete. There are so many unreported lynchings that outnumber the reported lynchings.

Senator CONNALLY. Well, do you know of any unreported lynchings?

Mr. PORTER. I know of unreported lynchings.

Senator CONNALLY. Well, do you have any record of them?

Mr. PORTER. Well, I know the State of Texas has had 549 lynchings on record, and over 400 of them were Negroes.

Senator CONNALLY. Well, I want to ask you if you recognize the records of Tuskegee Institute?

Mr. PORTER. No; Tuskegee Institute has not the full and complete reports.

Senator CONNALLY. Well, I am asking you the number for 1939?

Mr. PORTER. In 1939 I do not know of any.

Senator CONNALLY. Well, then, so far as you know there were not any?

Mr. PORTER. So far as I know.

Senator CONNALLY. Did you know of any in 1938?

Mr. PORTER. My own.

Senator CONNALLY. Well, barring your own; that is such an unusual case.

As a matter of fact, you were drawn on the jury, were you not?
Mr. PORTER. Yes, sir.
Senator CONNALLY. White officers were there with you?
Mr. PORTER. Yes, sir.
Senator CONNALLY. White officers drew you?
Mr. PORTER. Yes, sir.
Senator CONNALLY. You served on the jury?
Mr. PORTER. No.
Senator CONNALLY. You were not in any case, but you served on the jury?
Mr. PORTER. No.
Senator CONNALLY. You got your pay?
Mr. PORTER. I got my pay because I raised so much trouble.
Senator CONNALLY. Well, you were on the pay roll for the week?
Mr. PORTER. Yes.
Senator CONNALLY. And you got your pay?
Mr. PORTER. I did not get my pay for the week; and the sheriff said all he called would be paid for the week——
Senator CONNALLY (interposing). One minute. Answer my question.
Mr. PORTER. All right; I will try.
Senator CONNALLY. You were paid for the time you were there, were you not?
Mr. PORTER. Yes.
Senator CONNALLY. Well, that is all you were entitled to.
Mr. PORTER. No.
Senator CONNALLY. That is all you were entitled to.
Mr. PORTER. I claimed to be exempted.
Senator CONNALLY. Now, in Texas they have a pay roll for a week?
Mr. PORTER. No.
Senator CONNALLY. And the lawyers have a right to certain arbitrary challenges?
Mr. PORTER. Yes.
Senator CONNALLY. They do not have to give a reason for those challenges?
Mr. PORTER. No.
Senator CONNALLY. You were not in any case; but you were in attendance there ready to serve?
Mr. PORTER. Ready to serve.
Senator CONNALLY. Is that true? That is what I asked you.
Mr. PORTER. That is true.
Senator CONNALLY. That does not evade the law.
Mr. PORTER. I will be glad to leave this newspaper article to which I referred.
Senator CONNALLY. We will be glad if you will.
Mr. PORTER. I want to leave the Morning News for the record, which tells what actually happened to me.
Senator CONNALLY. No objection at all. We will be glad to have anything published.
The article referred to is as follows:

TOSSED OUT NEGRO ENDS HIS JURY VIGIL—TWO MEN THROW HIM HEAD FIRST DOWN COURTHOUSE STEPS—JUDGE LATER DISMISSES ALL TALESMEN

Two hours after he had been violently shoved out of the central jury panel by two unidentified white men and thrown down the front steps of the courthouse Wednesday afternoon, G. F. Porter, 55, Negro, above, college president, gave up his efforts to serve as a venireman in Dallas courts.

District Judge Sarah T. Hughes, after a conference with Judge Paine L. Bush, dismissed Porter and 16 white talesmen who were not selected from a panel of 28 men to hear a case in Fourteenth District Court.

Porter would not accept $9 for 3 days of sitting in the central jury panel until repeatedly informed by Bailiff T. A. Jasper that other veniremen were also being dismissed.

Sheriff Smoot Schmid and three deputies who had been sitting near Porter in Judge Hughes' courtroom, to forestall further violence, escorted the Negro until he was out of the courthouse.

Earlier in the afternoon, while Porter was sitting picking his teeth in the central jury room, two white men entered, suddenly grabbed him by the collar and seat of his trousers and rushed him out of the room. Reaching the Main Street porch of the courthouse, they tossed him head first down the steps to the sidewalk.

They stood glaring at him for a moment while a small crowd collected on the steps behind them, then dusted their hands together and strolled up Main. They were not members of the jury panel.

Porter picked himself up and deputy sheriffs, arriving too late to arrest his attackers, led him upstairs to the courtroom, where he had been ordered to report at 2:20 p. m. Porter is president of the Wiley Junior College branch here.

He sat in the section reserved for Negro spectators during selection of a jury in the case of R. B. Nevil asking $2,600 from the Coca-Cola Bottling Co. His name was scratched by both attorneys.

Porter had been expecting some action to evict him from the jury room since Monday, when he was first impaneled. He had been thrown out of the jury room on two previous occasions.

Judge Bush, technically in charge of the jury room, declared he had no comment to make concerning the incident.

(Witness excused.)

Senator VAN NUYS. I understand that there are five more witnesses. Three of those witnesses, I believe, are from out of town; three of them are from nearby——

Senator CONNALLY (interposing). I want to ask him one more question——

Senator VAN NUYS (interposing). One minute. Then for the sake of those witnesses who are from out of town I think we ought to have a meeting tomorrow forenoon to take care of these witnesses who are from outside of Washington.

We will meet tomorrow afternoon at 1 o'clock.

Senator CONNALLY. When did you come up from Dallas?

Mr. PORTER. I got up here Sunday morning.

Senator CONNALLY. Did Mr. White ask you to come up?

Mr. PORTER. He did not. The people of Dallas decided that I should come, and they paid the money.

Senator CONNALLY. And you still have some of the money?

Mr. PORTER. Yes, sir.

(Thereupon, at 5 p. m., the subcommittee adjourned until Wednesday, February 7, 1940, at 1 p. m.)

ANTILYNCHING

WEDNESDAY, FEBRUARY 7, 1940

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

Pursuant to adjournment, the subcommittee reconvened at 1 o'clock p. m., Senator Frederick Van Nuys (chairman), presiding.

Present: Senators Van Nuys (chairman), Connally, and Wiley.

Present also: Senators Capper of Kansas and Wagner of New York.

Senator VAN NUYS. The committee will come to order. On account of very important legislation pending, it may be difficult to secure a full attendance of the committee. The Chair is very anxious to complete the hearings today. I will call as the first witness Mr. Estell.

STATEMENT OF E. C. ESTELL, DALLAS, TEX.

Senator VAN NUYS. Please state your name.

Mr. ESTELL. E. C. Estell.

Senator VAN NUYS. And you live in Dallas, Tex.?

Mr. ESTELL. I do.

Senator VAN NUYS. You are pastor of St. Johns Baptist Church there?

Mr. ESTELL. Yes, sir.

Senator VAN NUYS. Do you desire to make some observations concerning the legislation in question? If so, the committee will be glad to hear you. You may proceed in your own way.

Mr. ESTELL. My testimony will be confined to two incidents. I wish to state that from early childhood I have been under the influence of lynching to some extent. When a child I was familiar with a lynching at Decherd, Tenn. I was too young to know anything about the case. My personal experience dates from 1918, when, at Estill Springs, Tenn., Jim McElhany was lynched by a mob.

Senator VAN NUYS. Was he a colored man?

Mr. ESTELL. He was a colored man.

Senator VAN NUYS. Of what was he accused?

Mr. ESTELL. I do not know, but generally he was considered to be a bad man, and he shot a white man.

Senator VAN NUYS. That is what he was accused of?

Mr. ESTELL. Yes, sir.

Senator VAN NUYS. Go right ahead. What happened?

Mr. ESTELL. I was going from Decherd to Tullahoma in the late afternoon. At Decherd I noticed a large number of people. I was on a train. It came to a standstill at Estill Springs, and a lot of

people piled off. A large number of people had gathered from other towns around Estill Springs. Pretty soon, before the train left, this man was brought to a point that in a little town is commonly considered the public square. His wife was screaming and crying and yelling, which created quite a bit of excitement among the passengers on the train. After a short time they went to the stores and got some goods boxes, and so forth. This man was tied to a tree. These boxes were piled around him, and he was there burned. The train, of course, pulled out and went on toward Tullahoma, and I went on. I returned to Decherd, a distance of 14 miles, by car.

The next morning it was learned also that a minister had assisted this man in some way. He was taken out and lynched. His name was C. G. W. Lyle. He was thrown into the church where he was the pastor. I saw the body of this minister, and later on I talked with the mother of this boy.

That is about all I know about this lynching, other than its effect. I do know that lynching not only puts ruin into the life of a community, but in many instances, and particularly in this one, the best Negro families are driven to widely separated parts of the United States. In that little town some of the best Negro families moved to various parts of the country. That is all I know about that particular one.

Now, in 1934, in June 1934, on Saturday night before the fourth Sunday, there happened in Pelham, Tenn., another lynching. That was like a good many others, an unreported lynching. There was a moonlight picnic near Pelham given by a group of colored people, which was visited by some white boys. They made some improper advances to some of the colored girls. Of course, that was resented by the colored boys there. It went on into the night until finally they had a fight. These white boys reinforced themselves, and one of the colored boys, one Dick Blue, was taken by these boys and lynched that night. I know nothing of the lynching other than what was reported to me; but on Sunday I viewed the body of this boy and saw a rope around his arm where the arm had been pulled off. I do not know the method or the cause of it. The body remained there practically all day, and I was informed it was removed by parties from Winchester, Tenn. So far as I know, there was no report whatever of that lynching. It was an unreported affair.

Senator VAN NUYS. Did the Tuskegee Institute ever investigate and report it?

Mr. ESTELL. No investigation, so far as I know, was ever made.

Senator VAN NUYS. All right. Proceed.

Mr. ESTELL. These two affairs are the only ones I care to testify on.

I do feel that this legislation will accomplish a desirable end. I feel that the passage of this legislation would be a great step in the direction of doing away with lynching in this country.

I wish to present for the record a group of miscellaneous affidavits by persons in Dallas, Tex., who have witnessed lynchings in Texas. There is one from Carter Roberts, who witnessed a lynching in Dallas; one from Theodore Scott, who witnessed a Waco lynching; one from Lucius Davis, who witnessed a lynching in Texarkana; one from George K. Williams, who witnessed a double lynching in Little Rock; one from Melvin Phillips, who also witnessed a double

lynching; and one from John H. Curtis, who witnessed a lynching near Navasota, Tex.

Senator VAN NUYS. They will be filed with the committee. Is that all?

Mr. ESTELL. That is all.

Senator VAN NUYS. I compliment you on boiling your testimony down to a narrative of the facts.

STATEMENT OF R. R. GROVEY, HOUSTON, TEX.

Senator VAN NUYS. State your name.

Mr. GROVEY. R. R. Grovey.

Senator VAN NUYS. You live where?

Mr. GROVEY. Houston, Tex.

Senator VAN NUYS. What is your occupation or profession?

Mr. GROVEY. I am proprietor of a barber shop.

Senator VAN NUYS. In Houston?

Mr. GROVEY. In Houston.

Senator VAN NUYS. How long have you lived there?

Mr. GROVEY. Twenty-four years.

Senator VAN NUYS. If you have any information pertinent to this inquiry, we will be glad to hear you.

Mr. GROVEY. First, I would like to say that I believe the antilynching bill, as it is drawn, will give some permanent relief to the depressed and underprivileged Negro group in Texas who, in my judgment, because of the political set-up, have no political or legal protection. I think they would be given some degree or form of legal protection such as is guaranteed to all citizens under our laws. I cannot conceive of courts, judges, sheriffs, or police officers, who do not in any way feel obligated to the people who elect them. This underprivileged group is absolutely deprived of any protection whatever from the law.

I want to call attention to a lynching that happened in my early childhood, when I was about 11 years of age. The man was an old Negro preacher. His offense was that he had a dispute with a man for whom he had done some work. On a Tuesday morning, when he couldn't get his money, he went to the office of the justice of the peace and attempted to file a charge against the man he had worked for. The judge refused to accept the charge. He told him he would not take a charge against a white man from a Negro. On Saturday morning, he reported to this white man that this old man, Allen King, had attempted to file a charge against him. This old man, Allen King, some time in day came to my mother's home, and was sitting in the back yard. Seven or eight men armed with six-shooters, and hoe handles, axe handles, and other arms, came down onto my father's farm and went into the yard and proceeded to beat and maim this old man. Some several years afterward he died as the result of the beating and abuse that he received.

Perhaps in the general sense, or in the technical sense, it might be said that could not be called a bona fide lynching, but this mob of seven or eight men certainly took the law into their own hands on a frivolous excuse, and proceeded to beat and intimidate and injure this old man.

I believe this antilynching bill would give relief to things of that kind.

My next experience was in Brazoria County, where I was born and raised. During my early years, I taught school, after I came out of school. I had occasion at one time to go to the county seat on business, some 20 miles from where I was teaching. A Negro had been accused of killing a white youth. This was a young man in a group that went out to give this fellow a little chastising. He shot one of those boys, and he died some 2 or 3 days afterward. Shortly after that a mob of 300 or 400 assembled there on the public road, with shotguns and axes and various arms.

I had occasion to go to the county seat. I happened to know personally the deputy sheriff in our community. He said to me "Grovey, where are you going?" I said, "I am going to the county seat." He said, "You better not go. Don't you know that you can't go through that mob?" I said, "I don't know anything about that mob, but I have got to go there to get my voucher, and I am going there on business. I have not had any trouble with anybody." So the deputy sheriff gave me a little slip. I wish I had kept it. It authorized me to go through the mob and go on about my business.

In the same county in 1918 I was selected as one of several Negroes to assist in selling Liberty bonds and such as that, in helping to make America and the world safe for democracy. On a Friday afternoon in the county seat, when I was talking to a mixed audience, white and black, there were 100 or more Negro draftees ready to go into the Army. One of the Negroes who was being sent to the Army took some bananas, and several of them were beaten almost unmercifully. The offense was taking some bananas. That was all they were charged with. It was very difficult for me to talk to an audience there about making the world safe for democracy, when a mob took these boys out and beat them.

Senator VAN NUYS. What town was that?

Mr. GROVEY. That was Angleton, the county seat of Brazoria County.

My next experience in being within the mob atmosphere was in Houston, Tex., in 1925. Dr. Cockrell, Negro dentist of Houston, had been accused of association with a white woman, and had been fined in the courts for the alleged act. He was met on a Sunday morning in broad daylight and forcibly taken from his car by 10 or 12 white men, badly beaten, and finally rendered sterile by castration. No arrest or investigations were made in connection with this affair.

On leaving the station that evening at 11 o'clock, not knowing anything of the incident and the consequent situation it brought about in the community, I was attacked by a group of 5 or 6 white men. In the fight which followed my coat was torn off by this group of men who knew nothing about me, and finally I was forced to rush back to the Union Station and secure protection from the railroad special police. This was a case where the supposed victim had been lynched, and innocent Negroes passing to and from their work were subjected to the same influence, which shows the extent and ruthlessness of the mob spirit.

The argument that mobs are the result of righteous indignation should be considered in the light of the difference in the attitude of the community when a Negro is accused of crime and when a white person is accused of a similar crime.

At Columbus, Tex., in November 1935, two Negro boys who had been accused of rape were taken from the sheriff and lynched.

The community publicly approved the crime because the boys, as juveniles under 18, could not be executed under the law.

I have here for the committee's consideration a case that happened on April 24, 1937. Miss Nannie B. Harrison, a young colored school teacher, subsequent examination of whom proved that she had been a virgin up to the time of the incident, was returning from church one Sunday night with two Negro boys. Their car was stopped by 5 young white men of the C. C. C. camp in that neighborhood, and they forcibly were taken from the car.

These boys dragged her to the side of the road, ravished and abused her for 2½ hours, taking turns while the others kept the Negro boys from interfering. The C. C. C. boys were given a sentence of 5 years, which was suspended. Although that happened nearly 3 years ago, the girl is still in bad health, and her whole life is shattered and she remains a nervous wreck. There was no community indignation against this releasing of these white boys. They were white, and the assaulted young woman was colored.

Senator VAN NUYS. Where was that?

Mr. GROVEY. In Texas.

Senator VAN NUYS. What part of Texas?

Mr. GROVEY. A county in east Texas.

Senator CONNALLY. Are you testifying to what you know or to what you have heard or read?

Mr. GROVEY. I am testifying to what I know as a result of my investigation.

Senator CONNALLY. You do not even know where this happened. Are you testifying to what you know or what you have read?

Mr. GROVEY. I am testifying to more than what I have read, because I happened to talk to people who knew. I forget that county.

Senator CONNALLY. Were you in the county seat?

Mr. GROVEY. Yes; I must have been.

Senator CONNALLY. You must have been? Were you or not?

Mr. GROVEY. I am sure I was. I don't just recall now.

Senator CONNALLY. You live in Houston?

Mr. GROVEY. Yes, sir.

Senator CONNALLY. How far was this from Houston?

Mr. GROVEY. Ninety or ninety-five miles.

Senator CONNALLY. In what direction?

Mr. GROVEY. Northeast.

Senator CONNALLY. Over toward the Louisiana line?

Mr. GROVEY. Somewhere near the Louisiana line.

Senator CONNALLY. Was it Jasper?

Mr. GROVEY. I think it was; I am not positive.

Senator CONNALLY. Hemphill?

Mr. GROVEY. I don't think so.

Senator CONNALLY. San Augustine or Livingston?

Mr. GROVEY. It seems to me it was Jasper.

Senator CONNALLY. That is the first one I named. You think it was Jasper?

Mr. GROVEY. I am not positive about the county.

Senator CONNALLY. All right. I am just testing your knowledge of geography.

Mr. GROVEY. Those boys were arrested, and she identified them. They were taken into the court and tried, and received a suspended sentence. My position is that a Negro tried under similar circumstances for a similar offense would have been given a far more drastic sentence.

I have here another case that happened in Dallas, the case of Mickey Pickett, in the early part of August 1939. Mrs. Cossette Fauset Newton, a prominent white socialite and savant, with degrees of A. B., A. M., M. S., Ph. D., L. L. B., L. L. M., and J. D., a globe-trotter, lecturer, former professor of English and dean of women of Southern Methodist University, kidnaped Pickett, held him in custody for a whole week with his hands tied before him, his face, head, eyes, and ears taped with nothing exposed except his mouth and nostrils. When the police were informed they found Pickett secluded in a bare room in the attic of Mrs. Newton's home in Dallas. She admitted that she had kidnaped him with the aid of her husband, L. W. Reid, Maurice Jackson, and Charlie Blair, a Negro chauffeur.

Senator CONNALLY. You do not mean that he participated in the mob? Or do you?

Mr. GROVEY. That is what they said. He had been there during that week and had been given the third degree. Although that happened in February 1939, nothing has ever come of it.

Senator VAN NUYS. Is that the end of that recital?

Mr. GROVEY. Yes, sir.

Senator VAN NUYS. What happened? Was anybody hurt or killed?

Mr. GROVEY. He is still in a serious condition.

Senator VAN NUYS. Who is?

Mr. GROVEY. Pickett.

Senator VAN NUYS. Who was he?

Mr. GROVEY. The man that was kidnaped and beaten.

Senator VAN NUYS. Have you witnessed anything in connection with that, or is your statement based on newspaper reports?

Mr. GROVEY. Not altogether.

Senator VAN NUYS. Confine your testimony to your personal knowledge. We cannot spend time discussing newspaper reports. Just confine yourself to your personal knowledge and observations.

Mr. GROVEY. I am exhibiting to the committee a photostatic copy of a letter received by the editor of the Houston Informer, following the *Gaines* v. *Missouri Education case*, in which this Negro editor took the position that the State of Texas should give the Negroes equal education opportunity. This is the letter he received from Klan No. 1, Sam Houston, Houston, Tex.

Senator CONNALLY. Is this permissible? It seems to be purely a matter of politics. I do not see what it has to do with this investigation.

Senator VAN NUYS. The Chair will have to rule that is not relevant.

Senator CONNALLY. I just read this morning of the amount appropriated in Texas for colored students in the State College. Of course, they do not spend as much money on the colored boys as on the white ones, because there are not so many students available. I do not see what this matter has to do with lynching.

Mr. GROVEY. I show this to show the spirit in our community.

Senator VAN NUYS. What does it say?

Mr. GROVEY. "Negro, be careful. This is a white man's country. K. K. K."

Senator CONNALLY. I have no sympathy on earth for the Ku Klux Klan. I opposed them when they were rampant. In my campaign for the Senate the first time I denounced them all over the State.

Senator VAN NUYS. You do not have to go to Texas for illustrations of the methods of the Ku Klux Klan. I have been stopped on the public highway in Indiana. We will not hear any evidence of that kind.

Mr. GROVEY. I think our junior Senator is opposed to the Ku Klux Klan. I think the white people of Texas do not justify their treatment of Negro citizens. I believe the majority of the white people of Texas believe they should have their fair rights in the courts. I think also that the antilynching bill would go a long ways in putting a little more backbone into those who have to enforce the law. We know the Negro is disfranchised in Texas. He has no vote and is helpless and at the mercy of those who administer the law.

Senator CONNALLY. I want to challenge that statement. Have you ever voted?

Mr. GROVEY. Yes, sir; I voted in the general election.

Senator CONNALLY. That is the only kind there is. You have voted many times, have you not?

Mr. GROVEY. In the general election.

Senator CONNALLY. Why do you say the colored man is disfranchised?

Mr. GROVEY. I say that he is disfranchised under the present political system.

Senator CONNALLY. It is well known that the Negroes vote in general elections, in school elections, municipal elections, vote for county officers.

Mr. GROVEY. We vote in general elections.

Senator CONNALLY. Has your right to vote ever been interfered with or challenged?

Mr. GROVEY. I think so.

Mr. CONNALLY. Were you ever kept from voting?

Mr. GROVEY. Yes.

Senator CONNALLY. When?

Mr. GROVEY. 1928.

Senator CONNALLY. Where?

Mr. GROVEY. In my precinct.

Senator CONNALLY. Who kept you from voting?

Mr. GROVEY. The county judge.

Senator CONNALLY. Had you paid your poll tax?

Mr. GROVEY. Yes.

Senator CONNALLY. How did he keep you from voting?

Mr. GROVEY. He said he had been authorized by the Democratic primary committee.

Senator CONNALLY. Was that a primary election?

Mr. GROVEY. Yes, sir.

Senator CONNALLY. I am talking about the general election. You know what I am asking you, and you know how to answer it. Have you been refused the right to vote in a general election in the State of Texas?

Mr. GROVEY. No, I have not.

Senator CONNALLY. All right.

Mr. GROVEY. I would like to say in that connection that in Texas the primary election is the ...al election. It is the vote in the primary election that really counts, and there is where only the white people vote. The Negro has no vote in the primary election, and that is really where our officers are elected.

A VOICE. That is right.

Senator CONNALLY. Who is that interrupting? Are we going to have order?

Senator VAN NUYS. We are going to have order. There must be no interruptions.

Mr. GROVEY. I strongly urge that the antilynching bill be passed for the following reasons:

1. To stamp out lynching by bringing swift and positive punishment to those who permit lynching.

2. To punish communities which foster lynching, with a stiff penalty for each lynching committed.

3. To provide a tribunal where the circumstances surrounding a lynching may be heard, free of domination of the mob spirit.

4. To strengthen State courts in their resistance to mob spirit by setting an example of judicial independence.

5. To guarantee to officers who want to protect their prisoners an enlightened and united sentiment of the community, for they will be sure then that the community will back them up, as they will be saving the community both embarrassment and great financial penalties.

6. To discourage wanton tendencies on the part of whites to throw their crimes off on innocent Negroes, because the persons so inclined will be aware of the fact that their cases will be thoroughly investigated.

7. To discourage legal lynchings by the courts and legal lynchings by police officers who now kill prisoners whenever they are personally offended by an act of the particular victim.

8. To provide a tribunal for investigating and punishing the many "hidden lynchings" which happen in isolated towns and on plantations and never reach the daily press, because the persons responsible have power enough to intimidate the local people.

9. To curtail and discourage the beating and abusing of Negroes by mobs in "near lynchings."

10. To take from Negroes in the South the constant dread and fear which haunt them for fear they may be lynched any hour by an infuriated mob. At present no Negro is safe from lynching in the South, however substantial, however law-abiding, or however well he may have been liked by the community; and once he is lynched, there is at present no redress for his family.

11. To put America on record, once and for all, as being officially opposed to lynching and determined to see it ended.

Senator CONNALLY. Do you know of any instances where men were killed by officers, to which you just referred a moment ago?

Mr. GROVEY. I think I do. I have a record here.

Senator CONNALLY. I am talking about your knowledge. Do you know whether such a thing ever occurred, within your own personal knowledge?

Mr. GROVEY. I didn't see it.

Senator CONNALLY. I did not think you did, and I do not think that anybody else did.

Mr. GROVEY. I got it from general knowledge, general information.

Senator CONNALLY. The chairman just told you to tell what you know.

Senator VAN NUYS. Have you concluded?

Mr. GROVEY. I have one other statement.

Senator VAN NUYS. Proceed.

Mr. GROVEY. I believe that is all.

Senator CONNALLY. You just said that the colored people in Texas are in constant fear of being lynched. Do you believe that?

Mr. GROVEY. Yes.

Senator CONNALLY. How long have you lived in Houston?

Mr. GROVEY. Twenty-four years.

Senator CONNALLY. Why do you continue to live there, if you are in constant danger of being lynched? Why do you not go somewhere else?

Mr. GROVEY. I don't want to run off from that condition. I would like to try to make it better.

Senator CONNALLY. Do you feel that you are safer there than you would be in Chicago?

Mr. GROVEY. I am not attacking Chicago.

Senator CONNALLY. You know that there was not a single lynching in Texas in 1939, do you not?

Mr. GROVEY. Not what you call bona fide lynching.

Senator CONNALLY. What do you mean by that? You know the Tuskegee Institute said that there was not a single lynching in Texas in 1939? Do you know any more about it than they do?

Mr. GROVEY. I know that Tuskegee does not have all the facilities to properly investigate lynching.

Senator CONNALLY. Do you have any better facilities than they have?

Mr. GROVEY. No, sir.

Senator CONNALLY. Do you know of any case in 1939 in Texas?

Mr. GROVEY. I do not.

Senator CONNALLY. Here is a State of 6,000,000 people, where you say the colored people are in constant dread of being lynched, but you do not know of a single case in that State in 1939. Is that true?

Mr. GROVEY. Yes, sir. I don't know of any in 1939.

Senator CONNALLY. And there was none in 1938.

Mr. GROVEY. I don't know about that.

Senator CONNALLY. That is according to the statistics. You are here as a witness. You say you know all about this.

Mr. GROVEY. I don't claim to know all of them.

Senator CONNALLY. Do you know of any in 1938?

Mr. GROVEY. No, sir.

Senator CONNALLY. You do know, do you not, of a number of instances where officers have taken prisoners from one county to another to avoid a lynching?

Mr. GROVEY. I know of some cases of that kind.

Senator CONNALLY. Where were you born?

Mr. GROVEY. On the Brazos River.

Senator CONNALLY. Where?

Mr. GROVEY. Columbia.

Senator CONNALLY. Brazoria County?

Mr. GROVEY. Yes, sir.

Senator CONNALLY. Do you not know that the mass of the white people of Texas are friendly to the colored man and the best friend he has?

Mr. GROVEY. I think that a great many of them are. I think there is a large group of white people who are quite indifferent.

Senator CONNALLY. I did not ask you that. You know what I asked you. If you do not want to testify, just say so. Do you not think the great mass of the white people of Texas and other States are friendly to the colored people and want to protect them and see that they have their rights?

Mr. GROVEY. I don't believe, when they have had 549 lynchings in Texas, that I could say that.

Senator CONNALLY. How about last year and the year before, when there was none?

Mr. GROVEY. I could not say it even then.

Senator CONNALLY. Just let me say one great difficulty is the large number of reformers who want to reform the South, people who feel that they would like to enter into a crusade of some kind and want to reform and civilize the South, and people like yourself, with a great deal of racial consciousness, encourage them in that, are always agitating this question. These people down there, if you would let them alone, would solve this question themselves. Is that not true?

Mr. GROVEY. I do not think so.

Senator CONNALLY. What was the case you referred to? Was that at Angleton?

Senator VAN NUYS. Summarize it briefly.

Senator CONNALLY. I was not present at the time.

Mr. GROVEY. That was a colored man named Steve Harrison.

Senator CONNALLY. Did you see the mob?

Mr. GROVEY. Yes, sir.

Senator CONNALLY. What had he done?

Mr. GROVEY. He killed a white man.

Senator CONNALLY. A white man or white woman?

Mr. GROVEY. A white man.

Senator CONNALLY. Was not the whole matter investigated?

Mr. GROVEY. Not that I know of. That was where I got a statement from the deputy sheriff permitting me to go on down to the county seat.

Senator CONNALLY. You asked him for it?

Mr. GROVEY. Yes, sir.

Senator CONNALLY. And he gave it to you, and you went on down?

Mr. GROVEY. Yes, sir.

Senator CONNALLY. And you were not molested?

Mr. GROVEY. No, sir; I was not.

Senator CONNALLY. Nobody interfered with you?

Mr. GROVEY. No, sir.

Senator CONNALLY. You referred to a case about the boys in the C. C. C. camp. There was an investigation of that, and they were indicted and tried.

Mr. GROVEY. Yes, sir.

Senator CONNALLY. That was the case where these white boys ravished a colored woman?

Mr. GROVEY. Yes, sir.

Senator CONNALLY. That was not a case of a colored man ravishing a white woman?

Mr. GROVEY. No, sir.

Senator CONNALLY. Of course, that was a terrible crime.

Mr. GROVEY. In most of these cases they were not even tried.

Senator CONNALLY. These white boys were tried.

Mr. GROVEY. Yes, sir.

Senator CONNALLY. By white people?

Mr. GROVEY. Yes, sir.

Senator CONNALLY. White officers arrested them?

Mr. GROVEY. Yes, sir.

Senator CONNALLY. And a white grand jury indicted them?

Mr. GROVEY. Yes, sir.

Senator CONNALLY. That is all.

Senator VAN NUYS. Senator Capper, would you care to ask any questions?

Senator CAPPER. No; thank you.

STATEMENT OF WALTER WHITE, SECRETARY OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

Senator VAN NUYS. You may state your name.

Mr. WHITE. Walter White.

Senator VAN NUYS. You live in New York City.

Mr. WHITE. I do now.

Senator VAN NUYS. With what association, if any, are you connected?

Mr. WHITE. I am executive secretary of the National Association for the Advancement of Colored People.

Senator VAN NUYS. And have been for how long?

Mr. WHITE. Twenty-two years as assistant secretary, acting secretary, and now secretary.

Senator VAN NUYS. What is the National Association for the Advancement of Colored People?

Mr. WHITE. I will make it as brief as I can. It was organized following the race riots in Springfield, Ill.

Senator CONNALLY. Where?

Mr. WHITE. Springfield, Ill.—Abraham Lincoln's old home, you will remember, Senator.

It is composed of individuals, whites and Negroes, northern and southern women, who felt something needed to be done to meet the rising tide of prejudice against Negroes in the United States. For 30 years we have been engaged in various fields, the field of legislation, of defense of Negroes charged with crime in an effort to see that they received a fair trial and were not convicted because of race prejudice.

We have done a good deal in the field of education. In these various fields we have had 13 cases in the United States Supreme Court, and won 12 of them. In the thirteenth case the Court declared it was without jurisdiction. So our record has been fairly successful.

Senator VAN NUYS. If you have any testimony relative to the pending legislation, we will be glad to hear it.

Mr. WHITE. I have a brief statement I would like to read.

Senator VAN NUYS. You may proceed.

Mr. WHITE. The chief contention of opponents of this legislation in the House of Representatives, and one which undoubtedly will be made in the forthcoming debate in the Senate, is that lynchings in 1939 reached an all-time low of three according to the figures of Tuskegee Institute, or of five authenticated lynchings according to the National Association for the Advancement of Colored People.

It is therefore asserted that the lynching problem is solved and that there is no need of Federal legislation.

Accepting for the moment that these three or five lynchings are all that took place during 1939, it is our contention that this in no way means that there is no need of an antilynching Federal law. The history of this crime shows that the number of lynchings varies in an inverse ratio to the intensity of the campaign for Federal legislation against lynching. When the campaign is vigorous, lynchings decrease; when the campaign is lessened, the curve of lynchings moves steadily upward. One of the South's most distinguished editors—Dr. Douglas S. Freeman, editor of the Richmond (Va.) News Leader and Pulitzer prize winner for his distinguished "Life of Robert E. Lee," writes me under date of January 27, 1940, apropos of this contention:

> I remain of opinion that the adoption of a suitable Federal antilynching bill is essential to protect human life in the South, and to assure the results established in 1939. If the prospect of a Federal antilynching law reduced lynching, the realities of such a law will prevent men permanently. Nothing else will.

Later I will read the letter of another great southern editor, Dr. Mark Ethridge, of the famous Louisville Courier-Journal.

Other distinguished southern editors have written or told me within recent months that the chief factor in reducing lynching has been the threat of Federal legislation. Many of them, who head influential newspapers in various parts of the South, have said to me that the agitation for a Federal bill against lynching has been of inestimable help in that it has permitted them to say truthfully that if the South itself would not do something about lynching, passage of a Federal law is inevitable. Remove this threat, many of these editors also assert, and lynching figures will mount.

It becomes increasingly evident, however, that the improvement is more apparent than real. The Nation-wide and world-wide publicity caused by lynching, and by the debate on the floor of Congress on the antilynching bill, has caused some reduction in lynching. But it is evident that there is as great need for Federal aid to the States in suppressing lynching mobs as there ever was. In certain parts of the deep South mobs have adopted a new technique. Before the present Nation-wide interest in a Federal antilynching bill lynchings were staged frequently by mobs numbering as high as five and ten thousand men, women, and children. Sadistic torture of the helpless victim was frequently indulged in. Lynchings were advertised in advance through the press and over the radio. Fingers, toes, and other parts of the body were cut off and proudly retained as souvenirs. Impressionable children, their minds still plastic, were brought by their parents to view the horrible spectacle. But an aroused public conscience, including that of such powerful groups as the women of the Methodist-Episcopal Church, South, has made such orgies less popular. The mob now delegates the task of execution to a smaller

group, usually consisting of 40 or 50 men, who take the victim into the woods or swamps, lynch him, dispose of his body, and thus keep the outside world from knowing what has happened.

Such a case was that of Joe Rodgers at Canton, Miss., last May 8. Rodgers was a hard-working, highly respected Negro citizen. He was a deacon in the local Baptist Church. His conduct was so exemplary that he had never had any difficulties with either the white or the colored people of Canton. He worked at a lumberyard. He was ordered by the foreman to move into a house owned by the company and to pay rent for it. Rodgers told the foreman that he already had a place to stay and preferred to remain there. When payday came on Saturday Rodgers found that $4.50 had been deducted from his pay envelope for rental of the house he had not occupied. When he protested to the foreman and asked that this money be paid him, the foreman cursed him, struck him with his fist, and then seized a shovel and struck Rodgers. To protect himself from being seriously injured, Rodgers took the shovel away from the foreman. When the foreman rushed at him, Rodgers in self-defense hit the foreman with the shovel. To avoid further trouble, Rodgers went home.

He returned to work on Monday morning. He was seized by a mob, knocked unconscious, terribly beaten, and his skull fractured, and killed. His body was weighted with stones and thrown into the Pearl River.

It is probable that no one would ever have known of what had happened to Rodgers had not the stones become dislodged and Rodgers' body risen to the surface where it was seen by many white and Negro citizens of Canton. One of these citizens wrote to us. It is significant that this citizen, a highly respected, law-abiding individual, begged us not to reveal his name because, he declared, he would be treated as was Rodgers were it to become known that he had revealed the lynching.

A distinguished southern white man was asked to investigate the case. He not only found the report of Rodgers' lynching to be true in every detail but also that there had been at least four other such lynchings in the vicinity of Cleveland, Miss., within a period of 4 months preceding the Rodgers lynching. It is significant that not one word of the Joe Rodgers or of these other four lynchings has ever been published in any newspaper as far as we are able to learn. God alone knows how many such lynchings have taken place in the rural areas of the South during the last few years about which the outside world knows nothing nor ever will know.

Last Tuesday a highly intelligent young southern white man, came to see me at my office in New York. He is a writer who has lived away from his native southern State for several years. Last August he went home to visit his mother. A short time before he returned, a classmate of his, who was known in school as a bully, had attacked a Negro on the main street of this southern town because of a small debt of two or three dollars. A crowd gathered. When the Negro tried to escape from the beating and to protect himself, the crowd, under the leadership of the bully, who was drunk, turned into a mob. They beat the Negro into unconsciousness, tied a rope around his neck and fastened the other end of the rope to the rear bumper of an automobile. They then rode up and down the main street of the

town and through the Negro section and finally, when their sadistic instincts had been satisfied, dumped the body of the dead Negro in the middle of the Negro section as a means of intimidating the other Negroes of the town. Not one word of this affair has ever been published, although, as far as its meager resources will permit, the National Association for the Advancement of Colored People tries to keep as accurate a record of lynchings as is possible.

Further evidence as to this technique of conducting lynchings by doing so without the fanfare of publicity is to be found in an article in the January 6, 1940, issue of Editor and Publisher, by Arthur Robb, the editor. As is well known, Editor and Publisher is the standard trade journal of the newspaper profession. Certainly no one can accuse it of propagandizing for any cause. Mr. Robb read an article by the Reverend John Paul Jones, a white Presbyterian minister, of Brooklyn, which dealt with the "increasing number of 'undercover' Negro lynchings in the South." Questioning the accuracy of Dr. Jones' assertion that newspapers are either suppressing or failing to carry stories of these lynchings, Mr. Robb wrote to two of the best-informed editors in the deep South for confidential comment. In writing of the replies he received, Mr. Robb made the statement that the comments of these editors "are completely frank and include some information which may surprise northern newspaper people." One of the editors writes:

I think that the Reverend Mr. Jones, while he undoubtedly exaggerates the situation, has some basis of truth in his assertion. It seems to depend on what a lynching is. If we mean by a lynching that a mob seizes a person before or after his arrest and kills him in vengeance for a crime committed, then I should say that no such incident escapes news and editorial treatment in the press of the South. This connotes popular excitement existing at the time, and some more or less organized effort made to capture the alleged criminal and kill him under stress of that excitement.

On the other hand, if every black man who is killed by a white man or even two or three white men, is called a lynching, then I am very sure that not all lynchings get into the news. I have a specific instance in mind. Last year, I think it was, a Negro boy abused a position of trust and violated a small child left in his care, though not in any brutal manner. He was tried, convicted, and sentenced to a long term. As the prisoner left the courtroom to ascend a few floors to the jail, the father of the little girl shot and killed him in a corridor. This received full publication, and we carried * * * a sharp editorial. The grand jury a few weeks later returned a no bill in the father's case, and we carried, as I recall it, another editorial. If the same thing had happened in one of our rural counties, with the murder anywhere but in the courthouse, there is a good chance that no paper would ever have found out about it.

There is a prominent citizen of one such rural county who has killed anywhere from 10 to 21 Negroes—the estimates vary widely and there is certainly no record—for various offenses, ranging from trivial to serious. He is a respected citizen, and has never been even indicted for any of his murders. The county has no sizable town, and I am sure that not one of this man's murders has ever received publicity. If any or all of them could properly be denominated lynchings, there is truth in what Rev. Mr. Jones has to say.

A few years ago efforts were made to organize a tenant farmers' union in various Black Belt counties in Alabama. I have no doubt that violence was practiced to get rid of the organizers and that some Negroes were killed on farms far from towns. I have heard some circumstantial reports in later years, not all from Communists, about such episodes.

I know about this case. There is no doubt that the officers of the law connived at the murder. There was medical evidence which established the innocence of the Negro boy. We did not list this

as a lynching, though there was reason to believe that three or more persons had conspired together in the killing.

And here is a letter from a mother I received only last Friday:

> My son was killed by a mob in Pickens, Miss., on the 4th of March 1939. He was Willie Hagood. He was taken out of the Big Black River on the 18th of March by the high sheriff of Madison County, Canton, Miss. Inquest was held by Dr. Chambers, of Pickens, Miss. He was buried by the Peoples Funeral Home at Canton, Miss. The certificate of death states that his neck was broken. Will you kindly assist me in having this matter brought to trial?

Last Saturday I received this letter from New York City (F. P. Rogers, 117 W. 144th St.).

These cases are so typical that they have a very real significance in discussing lynching and antilynching legislation. The late James Weldon Johnson once declared in a public address that "lynching in the United States has resolved itself into a problem of saving black men's bodies and white men's souls." The shooting of the Negro boy is an example of this. Lynching and the spirit of arrogant domination of those who indulge in it has done and is doing as much harm spiritually, mentally, and physically to those who dominate as it does to those whom lynching is designed to terrorize and intimidate.

Several years ago Rebecca West, the distinguished English critic, made a statement which is applicable to this attitude when she said, "There are two ways of being superior—one, by being superior; the other, by keeping someone else inferior to one's self." The true significance of lynching is that it is primarily designed to intimidate not only Negroes but poor whites as well so as to keep them inferior in power and to prevent them from organizing or doing anything effective about low wages, hours of work, voting, obtaining justice in the courts, or otherwise improving their present miserable state.

It will be remembered that opponents of the antilynching bill, during the Senate debate of 1938, vigorously asserted that the States could and would stop lynching and punish lynchers if they were let alone. It will be remembered that Senator McKellar of Tennessee inserted into the Congressional Record telegrams from a number of southern Governors making such assertions. But what are the facts? Since this bill was last before the Senate in 1938 there have been 11 thoroughly authenticated lynchings to say nothing of these additional cases which are just now coming to light. There has not been one conviction in any of these 11 cases and not even any arrests in 10 of the 11.

I would like to turn to the lynching figures for 1939. Let us again assume that the cases where the circumstances were authenticated are all the lynchings that actually took place even though we have already seen that they are not. Between 500 and 1,000 persons participated, as far as we are able to learn, in the lynchings of these 5 individuals, 2 of them white.

During the filibuster against the antilynching bill in the United States Senate in 1938 and again in the recent debate on the Gavagan bill in the House of Representatives, the statement was made innumerable times by southern Congressmen and Senators, "Leave us alone and let us solve our own problems; we can and will stop lynching and punish lynchers."

But I wish to call to the attention of the Senate and of the country at large that not one of the 500 to 1,000 lynchers of 1930 was brought to trial and punished, or even arrested. Nor is there any real hope of such punishment of lynchers where Negroes are the victims as long as Negro citizens are disfranchised in certain States in open violation of the Federal Constitution. It is absurd to expect that a sheriff or other peace officer is going to risk defeat when he stands for reelection when the lynchers are the voters and the lynched are nonvoters.

The charge has been made repeatedly by opponents of antilynching legislation that its supporters are motivated solely by political consideration. It has been charged that many Members of the House of Representatives and Senate would not vote for the bill were it not for the fact that the Negro vote potentially holds the balance of power in some 17 pivotal States which have a total vote in the electoral college of 281.

Supporters of this bill are not altogether politically naive. Of course, we know that some of those who voted for this bill in the House and who will vote for it in the Senate do so because Negro constituents, and white ones as well, favor this legislation. But should not this be so? In a truly democratic government persons elected to office are supposed to be considerate of the wishes of their constituents. We challenge anyone to name a single piece of legislation coming before the Congress or the legislature of any single State in the country where votes for or against that legislation are not influenced by political considerations.

But political considerations affect not only the supporters of this legislation, but the opposition also. We know full well that if the Federal Constitution were scrupulously observed in those States from which come the most vociferous opponents of this legislation and qualified Negro voters had free access to the polls, there would never be the slightest doubt that Senators and Congressmen from those States would not indulge in their bitter attacks on this legislation and on America's largest minority group. These Congressmen and Senators attack the bill because they believe that vitriolic attacks on legislation like this will insure their reelection. We know full well that the threatened filibuster in the United States Senate will probably result in the reelection of some of the participants.

One of the leading newspapers of the South, the Montgomery (Ala.) Advertiser, whose distinguished editor, Grover Hall, is also a Pulitzer prize winner for his courageous attack on the Ku Klux Klan, recently published an editorial criticizing the speech of an Alabama Congressman in which he attacked the antilynching law and raised the spurious issue of "white supremacy." The Advertiser declared:

> There are 12,000,000 Negroes in the United States. Because most of them live in the South, most of them are politically helpless. If they were not politically helpless they would not be jeered by political orators, they would not be subject to humiliation. Couldn't Sam (Hobbs) have left this out of his speech?

It is hoped that in the forthcoming debate on this legislation on the floor of the United States Senate discussion will not again descend to the level which characterized previous filibusters.

Another argument opponents of this legislation have made which is fallacious attempts to compare homicides and so-called gangster killings in cities like New York and Chicago with lynchings in the South. For example, one Mississippi Congressman in the recent

House debate cried, "There were only 3 lynchings last year while there were 272 murders in New York City! Why bother with a mere bagatelle?"

Let us examine this contention for a moment. I have secured from Louis F. Costuma, chief inspector of the police department of the city of New York, the official figures of the homicides in New York City during 1939. According to Mr. Costuma, there were 291 cases of murders and manslaughters in New York City during last year instead of 272, as stated by the Mississippi Congressman. But—and here is the essential fact—there were 248 arrests, 47 convictions, and there are now 132 persons under indictment awaiting trial, a number of whom will be convicted and sentenced if their guilt is proved in a fair trial, impartially conducted.

Contrast this record with those of the States in which lynchings occurred during 1939. We have already seen that absolutely nothing was done by the authorities to enforce the law through the arrest, trial, and conviction of the lynchers of 1939.

I would like to point out another circumstance which invalidates the argument of those who seek to excuse their own failures by pointing to the shortcomings of others. No honest person would for a moment maintain that in New York City there is any public condoning of murder and manslaughter. On the contrary, there is most vigorous condemnation. But growing out of the condition which long-continued and practically unrebuked lynchings in certain States has created, there is a reluctance even on the part of otherwise decent people in some of the Southern States to speak out and insist that officers of the law arrest and convict lynchers.

If the members of this committee and of the Senate are sufficiently interested and concerned about these conditions to want to find out what the atmosphere is in a town where lynching is possible, let me urge the reading of a novel soon to be published by the distinguished southern novelist, Erskine Caldwell. Its title is Trouble in July. It reveals how the sheriff is urged by the political overlord of the town to go fishing whenever a lynching is about to take place so that he can be absolved from responsibility and at the same time escape political consequences from the white voters who are the lynchers. It reveals the moral and mental degradation of whites and Negroes alike which inevitably accompanies a regime where men can take the law into their own hands and be certain that there will be no punishment for their crime.

You will find in this novel affirmation of the immortal words of Abraham Lincoln, who said in his address at Edwardsville on September 13, 1858:

> And, when, by all these means you have succeeded in dehumanizing the Negro, when you have placed him where the ray of hope is blown out as in the darkness of the damned, are you quite sure that the demon you have roused will not turn and rend you? What constitutes the bulwark of our own liberty and independence? It is not our frowning battlements, our bristling seacoasts, our Army, and our Navy. These are not our reliance against tyranny. All of those may be turned against us. Our reliance is in the love of liberty which God has planted in us. Our defense is in the spirit which prized liberty as the heritage of all men, in all lands, everywhere. Destroy this spirit and you have planted the seeds of despotism at your own doors. Familiarize yourselves with the chains of bondage and you prepare your own limbs to wear them. Accustomed to trample on the rights of others, you have lost the genius or your own independence and become the fit subject of the first cunning tyrant who arises among you.

For more than two decades we have petitioned the Congress of the United States to pass a law to help the South and other parts of the country to free themselves from this menace of mob violence. Time and time again our plea has been denied by filibusterers who prevented the greatest deliberative body in the world from exercising its democratic right to vote up or down this type of legislation. That refusal to permit a vote is a denial of the democratic process, and it was done on the floor of the Senate.

In the meantime, democracy has been destroyed in other parts of the world, and is gravely threatened in our own beloved country. Who can tell how much of the spirit which has led to the formation of organizations like the Ku Klux Klan, the Black Legion, the bund, and the various "shirt" outfits, with their resort to direct action and a flouting of the law, is due to the disrespect for the law which lynchings over a period of a half century or more has created. Americans are alarmed, and rightfully so, at the growth of these subversive organizations which seek to destroy democratic governments. But if I were a Communist, a Nazi, or a Fascist and wanted to destroy or weaken American democracy, I would work unceasingly to prevent passage of antilynching legislation. If I wanted to convince 12,000,000 American Negroes who constitute one-tenth of our population that they have no hope of justice under the American form of government, and wished to induce them to join a movement to overthrow democracy, I would oppose enactment of the antilynching bill because I could point to the continuation of lynching and all of the terrible things which the lynching spirit perpetuates as proof that they should no longer have faith in our form of government.

It is because we do believe that democracy, with all its shortcomings, is the best form of government yet devised that we urge the committee to report favorably and immediately upon this bill and to speed the bill to the floor of the Senate for temperate, intelligent debate and a vote. We urge those who truly love America to abstain from repetition of expensive filibustering which causes our Government to be held up to ridicule here and abroad. All we ask is that Members of the Senate, as representatives of the people of America, be permitted to vote, each of them, his or her conviction on this legislation. If the majority of the Senate should vote against the bill and defeat it, we, as good Americans, will accept that verdict without complaint. Is it too much to ask that opponents of this bill be willing to approach this subject in the same spirit?

The American people are overwhelmingly against our country's being involved in any war. But who can tell what will take place 6 months or a year hence? Members of the Senate are aware that public opinion may change if the forces of Hitler and Stalin and other totalitarian nations appear to be about to win. Despite the present state of public opinion in the United States, no sane and informed person can deny the possibility that the United States may eventually be drawn into the second World War either to protect American lives or investments. Should that terrible eventuality become a reality, American Negroes will once again be called upon as Americans to bear their full share of the burden of war. They will be asked once again to die for democracy. I ask you Members of the Senate to place yourselves in the position of the American Negro in the event of war. How would you feel about fighting for democracy for a country whose national legislative body refuses to

pass a mild law against lynching? How would you feel if you put on the uniform of the United States Army, shouldered a rifle, bade your loved ones farewell, and went off to war with the realization that in your absence a lawless mob could take your father, mother, brother, or sister and lynch or burn them alive at the stake? If you say that such an idea is fantastic, I direct your attention to the lynching records of the years following the last World War when Negro soldiers, returned from France, were lynched because they wore the uniform of the country in whose defense they had fought in foreign lands.

We ask the United States Senate, for this and other reasons, that it pass the antilynching bill and not make it any more difficult to respect and love our native land.

Another witness before this committee will tell how unchecked lynchings and unpunished lynchers in the United States have caused our country to be held up to ridicule by other nations. Permit me in closing to transgress on his testimony somewhat by relating two personal experiences which are unhappily typical.

A few evenings ago, I talked with a small group of distinguished scientists in New York. Most of them were born in other countries and had emigrated to the United States, where they had contributed their great talents toward the enrichment of our national life and culture. One of them was a brilliant biochemist, who, though not a Jew, had fled from Nazi Germany because his conscience would not permit him to approve the Hitler regime which menaces the peace of the world. Another was a distinguished Swiss social scientist who is now an American citizen. A third was a famous writer. Someone asked, "What do you remember as the first thing you heard about America?" Promptly and unanimously each one of the three persons answered "lynching!"

Should the Congress not pass this legislation and thereby show the world at large that the National Government is against this terrible crime? The mere enactment of such a law would make more effective and less hypocritical and vulnerable our just condemnation of the oppression of racial and religious minorities in other countries.

One more episode and I am finished. Some years ago I wrote a novel in which there was a lynching. In mentioning its name I am not attempting to get free advertisement for the book, because it is now out of print. The novel was translated into 9 or 10 languages. One of these was Japanese. It was first published under its title, "The Fire in the Flint." It received favorable reviews and had a modest sale from which, unhappily, I received no royalties.

A few years later, Japan invaded China. There was strong moral indignation in the United States against Japan's aggression. So widespread did this condemnation become that efforts were made to counteract it. Among these efforts was the republication of my novel. Its title was changed to the single word "Lynching." To my great chagrin the book, under its new title, had an enormous sale, not because of any merit which the novel itself had but because the Japanese reader of the novel could say, with justification, "This is what goes on in a country which presumes to tell us Japanese what is the moral and ethical thing to do."

I would that I had words eloquent and convincing enough at my command to stir the conscience of each Member of the Senate to the

end that the great moral influence of our National Government may be added to that of the several States in checking and eventually ending mob violence which threatens destruction of democracy itself.

Mr. WHITE. May I read the letter from Dr. Ethridge to which I referred?

Senator VAN NUYS. Very well.

Mr. WHITE (reading):

THE COURIER-JOURNAL
THE LOUISVILLE TIMES

LOUISVILLE, KY., *January 29, 1940.*

Mr. WALTER WHITE,
Secretary, National Association for the Advancement of Colored People, New York, N. Y.

DEAR MR. WHITE: I have no hesitation whatever in saying that I favor the passage of a Federal antilynching bill. That is based upon several reasons:

1. I favor it as an affirmation that Americans as a people do not tolerate a form of barbarism that is only a little more refined than cannibalism; not as sentimental as suttee, and not as effective as pogroms.

America may consider herself a group of States, but in the eyes of other people we are a nation, and we must assume responsibility as a nation for whatever barbaric practices occur inside our borders. We profess to be a democratic and Christian Nation. If we are those things, we can afford to push aside legal hair-splitting and tub-thumping oratory, to say as a nation to the small lawless element, "You shall not brand us as barbarians to satisfy your own blood-lust."

2. I favor it because the United States Government owes the protection of a Federal law to its humblest citizens. The guaranties under the Bill of Rights are extended to the persons of citizens of the United States, not to the citizens of States. The accused has the right to be heard in court, and in court he has the right to confrontation, to counsel, to the preparation of a defense, to testify as he desires, and to present witnesses. Those are rights guaranteed under the Federal Constitution and nobody—no individual, no group, and no subdivision of government—has a right to abrogate them. Unless the humblest person does enjoy them, the bill of rights of the Federal Constitution becomes a mockery.

It is fruitless to argue that the ordinary State statute covers lynching, because it is too late to talk about protecting a man in his rights after he has been killed by a mob. Lynching may be murder, but it is a form of murder that has its root in defiance of Federal guaranties, and not merely in ordinary human emotions.

3. I favor the Federal bill because the States have failed to afford protection vouchsafed to American citizens under the Constitution of the United States. There have been approximately 5,150 lynchings recorded since 1882. In only 40 cases has there been action of any sort against the lynchers. There is not on record that one State officer has ever been removed from office or punished by a State for failure to protect his prisoner. In 1937 every person who was lynched was taken from officers, but not one officer was punished, although in one case the names of 17 members of the mob were known; and although at least 4 of the lynchings occurred in broad daylight. In only two of the cases was it possible to plead protection of Southern womanhood.

In my capacity as reporter, I have witnessed three lynchings, and I know enough about them to know that the failure to protect the prisoner and to arrest and prosecute his lynchers is a willful and deliberate failure on the part of officers of the law. To me, their failure is in essence nothing more nor less than the conspiracy of the State, whose sovereignty they represent, with its lawless element, to deprive some citizens of their fundamental rights. Since officers of the law are the direct, sworn agents of the State government, then it must follow that in approximately 5,100 cases the States have not only failed to give protection, but also have actually been partiepe criminis.

4. I favor a Federal law because I must reject absolutely the theory that it is an invasion of the rights of the States. Having lived almost all my life in the deep South, I must confess with chagrin that all the prattling about States

rights has usually meant that we had a right to have as much pellagra, as much hookworm, as much malaria, and as much illiteracy as we pleased, as long as we were let alone.

If the Southern States had followed the theory of States rights with integrity, there would be some validity in the argument. But what about the Smith-Hughes bill? The Smith-Lever bill? What about all the highway-aid bills and the thousand and one forms of aid or relief that have been extended under the New Deal? It may be argued that the Lindbergh law and the motor vehicle law are interstate, but was not the prohibition law a direct surrender of police power to the Federal Government? I do not see that the Federal antilynching law introduces any principle that is at all new. The act does not become operative until the State has abdicated its power or violated its relation to the Federal Government.

5. I favor the law because I feel it would be effective. It is well enough to argue the theory of education, but what is the answer to 1932, with 10 lynchings, and 1933, with 28?

The number of lynchings has increased with either economic adversity or prejudicial agitation. I have information which indicates that there is threatening revival of the Ku Klux Klan in the South. If that is true, the number of lynchings will go up in years when economic pressure is great, or when racketeers who collect dues for the Klan have their drives for membership.

Education is a great force, but the whole history of lynching demonstrates that the class that lynches must have a force beyond education. I believe that the added pressure of a Federal statute would make it extremely difficult for politicians, politically ambitious district attorneys, or sheriffs to risk being branded as cowardly or negligent.

6. Finally, I favor it because I think that it is in line with enlightened opinion not only in other sections, but also in the South. A Gallup poll showed that 72 percent of the people of the United States and 63 percent of the people of the South feel that they have a right and an obligation to use this last legal expedient to wipe out lynching. I feel that the true voice of the South is not the voice of those who filibuster against measures designed to express its humanity, but that the real voice of the South is that of the 63 percent who look at lynching as the horrible social and racial phenomenon that it is, and think we should stop short of no legal expedient to wipe it out.

I do not see how anybody who believes in a real democracy can subscribe, even by the indirection of red-herring arguments, to the use of instruments which in the long run will destroy democracy. There can be no democracy where undue use of economic power, brutality, and intimidation are present.

The Ku Klux Klan, which died about fifteen years ago, started out whipping Negroes, but it wound up so emboldened that it was whipping white people. If anybody subscribes to the horrible theory that it is all right to whip Negroes, he must be given at least some pause by the thought that brutality has never known any racial or geographical bounds.

We will never have a real democracy in this country until the people who are most affected by social or political measures taken in their behalf are given a right to express themselves at the ballot box. Far from having realized that ideal, we are really just now facing the proposition as to whether we shall continue to give Federal Government favor to an extra-legal phenomenon which in too many instances has been used to keep a great element of our people in subjection; to prevent them even from violating their legitimate aspirations for themselves as a race and as a people.

Sincerely yours,

MARK ETHRIDGE.

Mr. WHITE. I should like the privilege of placing in the record, for such value as it may have, one of the most valuable statements I have encountered in this study of lynchings, made by the Department of Sociology of the Southern Methodist University of Dallas, Tex.

Senator CONNALLY. When was that issued?

Mr. WHITE. In 1930. Do you want to see it?

Senator CONNALLY. Yes. I think it is rather old. I do not see any use encumbering the record with something that happened 10 years ago.

Senator VAN NUYS. The committee will later pass upon it. You may leave it with the clerk.

Do you have any questions, Senator Connally?

Senator CONNALLY. How long have you been connected with this organization of which you are secretary?

Mr. WHITE. Twenty-two years.

Senator CONNALLY. Continuously?

Mr. WHITE. Continuously.

Senator CONNALLY. During all that time?

Mr. WHITE. Except for 1 year, during 1927 to 1928, when I lived in France, as a Fellow of the Guggenheim Memorial Foundation.

Senator CONNALLY. How old are you?

Mr. WHITE. Forty-six.

Senator CONNALLY. You were not in the World War?

Mr. WHITE. No, sir.

Senator CONNALLY. You devoted a good deal of time in your statement to talking about the World War. You were not in the last World War?

Mr. WHITE. No, sir.

Senator CONNALLY. You do not expect to be in the next one, do you?

Mr. WHITE. I am afraid I am a little old, but I have a son.

Senator CONNALLY. Do you draw a salary?

Mr. WHITE. Yes, sir.

Senator CONNALLY. A good one?

Mr. WHITE. Yes, sir.

Senator CONNALLY. How much?

Mr. WHITE. $5,000 a year.

Senator CONNALLY. Your funds are collected by subscriptions and donations?

Mr. WHITE. Subscriptions and memberships in the association.

Senator CONNALLY. Do you have any dues?

Mr. WHITE. Yes, sir.

Senator CONNALLY. How much are the dues?

Mr. WHITE. The minimum membership fee is $1. There are other memberships, ranging from $2.50 to $10 and $25, and a life membership of $500.

Senator CONNALLY. You quoted from some letters that you received but did not give the dates.

Mr. WHITE. I am supplying copies of those letters. The first one was January 30, 1940.

Senator CONNALLY. And the next one?

Mr. WHITE. The second one was February 2, 1940.

Senator CONNALLY. Who is that from?

Mr. WHITE. F. P. Rodgers, 117 West One Hundred and Forty-fourth Street, who said he had information from Florida that this lynching had taken place.

Senator CONNALLY. When did it take place?

Mr. WHITE. It took place January 25, 1940.

Senator CONNALLY. You had been informed about it before you got these letters?

Mr. WHITE. No, sir.

Senator CONNALLY. You had not written them and asked for letters?

Mr. WHITE. No. We frequently send out requests for information of that kind.

Senator CONNALLY. You are familiar with the Tuskegee Institute, are you?

Mr. WHITE. Yes; very well.

Senator CONNALLY. You said this case about Rodgers was never published?

Mr. WHITE. At the time I first heard of it.

Senator CONNALLY. It was reported in the New York Times, which referred to the fact that there were only three lynchings in 1939. It does mention that case, does it not?

Mr. WHITE. Senator, I am afraid we are getting our dates mixed.

Senator CONNALLY. No; we are not getting our dates mixed.

Mr. WHITE. Will you permit me to finish my statement?

Senator CONNALLY. No; I will not. If you do not want to answer, just say so.

Here is a report from the Tuskegee Institute dated December 30, in which it says there were only three lynchings in 1939. You saw that statement, did you not?

Mr. WHITE. Yes. The point I wish to make——

Senator CONNALLY (interposing). Just a minute. I asked you if you saw that statement.

Mr. WHITE. Yes, sir.

Senator CONNALLY. Is it not true that was given out by Tuskegee Institute, stating that there were only three lynchings in the United States in 1939, one of which was at Panama City, Fla., on April 1, when Miles Brown, a white man, was shot to death after being taken from the jail by a band of four or five masked men. Brown had been convicted of the first-degree murder of a former employer, with a recommendation for mercy, which carries a mandatory sentence of life imprisonment. The jail guard quoted the masked men as expressing resentment that Brown had not received the death penalty. That was a case of a white man in Florida.

Mr. WHITE. Yes, sir.

Senator CONNALLY. Do you recall the second lynching in Florida, at Daytona Beach, where an automobile driven by Lee Snell, Negro taxi driver, struck a bicycle ridden by a 12-year-old boy, killing the boy almost instantly. Snell was immediately taken into custody by the Daytona Beach police and held for county authorities. A few hours afterward Constable James Durden swore out a warrant for Snell, charging him with manslaughter. He took him in custody and started for the county seat. When he got about 4 miles from Daytona Beach he said he was overtaken and passed by an automobile occupied by Everett and Earl Blackwelder, brothers of the boy who was killed. He said they swung their car across the road, blocking it, and when Snell got out of the car several shots were fired into his body. The brothers were indicted on a first-degree murder charge but were acquitted. This proposed law would not be applicable to that case, would it?

Mr. WHITE. Under strict legal interpretation, it would not.

Senator CONNALLY. That is what I am talking about.

Mr. WHITE. There were six other people, three white and three colored, who were there at the time, but did not participate in it.

Senator CONNALLY. You could not convict anybody who happened

to be walking along the road at that point. Only two people actually participated in it. Only one colored man was lynched in 1939, and that was Joe Rodgers, a Negro sawmill worker at Canton, Miss. He was allegedly engaged in an altercation with a white foreman of the sawmill. The foreman, according to witnesses, was struck on the head and knocked unconscious. Several days later the Negro's body was found in Pearl River near Canton, bound and badly beaten. Nobody knew how many participated in that. That would not come under this bill, either, would it?

Mr. WHITE. Perhaps not.

Senator CONNALLY. There seems to be a peculiarity about some of these cases. That was a white man who was lynched in Florida, Miles Brown.

Mr. WHITE. That is true.

Senator CONNALLY. You also quoted a number of such cases where nobody knew about it except yourself. How did you get that information?

Mr. WHITE. We have our central office, but the lifeblood of the greater part of our organization is scattered over the country in various towns and cities from which we secure information. In this Canton, Miss., case members of our association wrote to us about it. We also have contact with newspaper men and other people in the South, and various organizations.

Senator CONNALLY. You said that nobody had any knowledge of these cases. How did your informants get their knowledge?

Mr. WHITE. They lived in the communities where there were means of securing information.

Senator CONNALLY. Did you report this to the authorities?

Mr. WHITE. We have done that on numerous occasions.

Senator CONNALLY. You referred to a young man who had called on you. Who was he?

Mr. WHITE. A young white man from Mississippi.

Senator CONNALLY. What is his name?

Mr. WHITE. Lind.

Senator CONNALLY. His first name?

Mr. WHITE. James.

Senator CONNALLY. Where does he live?

Mr. WHITE. New York City.

Senator CONNALLY. Where?

Mr. WHITE. Madison Avenue.

Senator CONNALLY. Where did this conversation take place?

Mr. WHITE. New York.

Senator CONNALLY. New York City?

Mr. WHITE. Yes. He was so shocked by that outrage that he wrote to some friends about it.

Senator CONNALLY. Which outrage are you talking about?

Mr. WHITE. The lynching in his native town of Mississippi. There was no report of it in the press.

Senator CONNALLY. If Tuskegee did not know about it, and nobody else, how did this young man know about it?

Mr. WHITE. Neither Tuskegee nor the national association can get information on all of these cases.

Senator CONNALLY. Do you not regard Tuskegee as acting in good faith?

Mr. WHITE. No doubt.

Senator CONNALLY. Do they not carry on these investigations and collect this information in that way?

Mr. WHITE. No. Tuskegee Institute takes most of it information from newspaper clippings, and many of these incidents are not reported in the newspapers.

Senator CONNALLY. You do not go out over the country and collect this information. You are in New York.

Mr. WHITE. We have branches all over the South.

Senator CONNALLY. You cited a case of an attack by a colored man on a child, and the father of the child shot him.

Mr. WHITE. Yes, sir.

Senator CONNALLY. That was not a mob, was it?

Mr. WHITE. No.

Senator CONNALLY. That would not come under this bill, would it?

Mr. WHITE. Perhaps not.

Senator CONNALLY. Why did you cite that case?

Mr. WHITE. I cited a letter from Editor and Publisher.

Senator CONNALLY. Why did you cite that case?

Mr. WHITE. It was included in the letter which was quoted verbatim.

Senator CONNALLY. Do you believe in including all murders under this bill?

Mr. WHITE. No, sir.

Senator CONNALLY. Do you believe in including gang murders in New York, as well as lynchings in the South?

Mr. WHITE. Gang murders are not confined to New York.

Senator CONNALLY. I did not ask you that.

Senator WAGNER. Mr. Chairman, I think the witness should have the opportunity fully to answer the question before another question is asked.

Senator CONNALLY. I listened to this man's full statement without interruption. I claim that I am entitled to inquire into the matters covered by his statement.

Senator WAGNER. I do not say that you are not.

Senator CONNALLY. I would like to have an answer to the question.

Senator VAN NUYS. You may answer.

Mr. WHITE. I do not.

Senator CONNALLY. You do not?

Mr. WHITE. No, sir.

Senator CONNALLY. That is what I wanted to know. You need not confine it to New York. Do you favor including gang murders in the Federal law? Do you favor including in this bill prohibition against gang murders, North or East, or any other section of the country, as well as so-called lynching cases?

Mr. WHITE. There might be some qualifications to that.

Senator CONNALLY. That is a plain question. You can answer it "yes" or "no."

Senator VAN NUYS. Answer "yes" or "no," and then make such explanation as you desire.

Mr. WHITE. I do not.

Senator VAN NUYS. If you want to make any explanation, the committee will hear it.

Mr. WHITE. It would seem to be sound legislative practice not to try to cover the whole world in one bill. This bill is aimed at a

specific malady in American life—namely, lynching. It would seem to me the bill should be confined to the specific evil at which it is aimed. If some one wants to introduce another bill dealing with some other crime, that is perfectly agreeable, and would seem to me to be the proper procedure.

Senator CONNALLY. You made some reference to the motives of those who oppose this bill as being political, or something of that kind.

Mr. WHITE. I included that in a general declaration.

Senator CONNALLY. I suppose you included Senator Borah, late Senator of the United States, who made a speech in the Senate against this bill? I suppose you would attribute to him the desire to be reelected from the State of Idaho, with practically no colored population?

Mr. WHITE. Senator Borah was not up for reelection, and I prefer not to discuss him in that connection.

Senator CONNALLY. Is that your only reason?

Mr. WHITE. No.

Senator CONNALLY. Take a Senator who is still living. Would that apply to Senator Norris?

Mr. WHITE. It certainly does not apply to him.

Senator CONNALLY. You think that he was not influenced by political motives?

Mr. WHITE. No. Senator Norris is one man we believe to be completely sincere.

Senator CONNALLY. One member of the Senate who is completely sincere. Would you include any others?

Mr. WHITE. Yes; there are several others.

Senator CONNALLY. Would you impute that motive to Senator Hale of Maine, that he was merely trying to be reelected, and therefore would vote against such a bill?

Mr. WHITE. Will you permit me to make a brief explanation, or do you insist on a "yes" or "no" answer?

Senator CONNALLY. I will let you go as far afield as you want to. I think you have already gone a long ways in that direction.

Mr. WHITE. Thank you.

This is an election year. Both major political parties naturally wish to be successful.

Senator CONNALLY. I am asking you about Senator Hale of Maine, who voted against this bill 2 years ago. You intimated that many of them were influenced by political motives. Do you apply that to Senator Hale or not?

Mr. WHITE. I should like to state that he did not vote against the bill 2 years ago, because it was never voted on.

Senator CONNALLY. I refer to preliminary motions and that sort of thing.

Mr. WHITE. I would assume that he voted his convictions. I also know that certain Republicans, when they see the Democrats fighting each other, enjoy very much seeing the difference of opinion in the Democratic party on that issue.

Senator CONNALLY. Do you think that political motives influenced only those opposing the bill, or would you include a few on the other side?

Mr. WHITE. Unquestionably some on the other side.

Senator CONNALLY. The opposition was more political than those who favored the bill?

Mr. WHITE. That would amount to a discussion of metaphysics.

Senator CONNALLY. I know, but you are qualified to talk about metaphysics.

Mr. WHITE. I do think that some of the opposition was political, although many of them admitted the Negro was disfranchised.

Senator CONNALLY. Do you mean to imply the Negroes are disfranchised in Texas?

Mr. WHITE. Pretty largely so.

Senator CONNALLY. Have you ever been in Texas?

Mr. WHITE. Yes, sir. They almost lynched me in Dallas last year.

Senator CONNALLY. Almost.

Mr. WHITE. Yes.

Senator CONNALLY. They did not quite succeed.

Mr. WHITE. No. That is why I am here today.

Senator CONNALLY. They did not quite lynch you?

Mr. WHITE. No.

Senator CONNALLY. More than three formed a mob and took after you?

Mr. WHITE. Would you be interested in hearing the story?

Senator CONNALLY. I want to know if more than three persons were after you.

Mr. WHITE. Quite a group.

Senator CONNALLY. Did they catch you?

Mr. WHITE. They did not have to. I stayed right there.

Senator CONNALLY. Were you molested in any way?

Mr. WHITE. I was threatened.

Senator CONNALLY. Was any violence practiced upon you?

Mr. WHITE. No, because——

Senator CONNALLY (interposing). You were not lynched.

Mr. WHITE. A group of Texans——

Senator CONNALLY (interposing). The Federal Government did not protect you?

Mr. WHITE. A group of colored people.

Senator CONNALLY. Did white people help protect you?

Mr. WHITE. Yes.

Senator CONNALLY. And they were Texans?

Mr. WHITE. As far as I know.

Senator CONNALLY. And you were not harmed? You might have been frightened, but you were not harmed, were you?

Mr. WHITE. I was not particularly frightened. I was protected by Texas people, both black and white. I was passing through from Oklahoma to Galveston, and had to lay over 5 hours in Dallas. When I arrived I found a considerable crowd there, apparently taking some interest in me. They had arranged a meeting for me at the Y. W. C. A.

Senator CONNALLY. Was that last year?

Mr. WHITE. 1938.

Senator CONNALLY. During the time the election was on?

Mr. WHITE. Shortly after.

Senator CONNALLY. All right.

Mr. WHITE. It seems there had been a protest made to the mayor against the meeting.

Senator CONNALLY. You were not present, were you?
Mr. WHITE. I read it in the newspaper.
Senator CONNALLY. All right. Go ahead.
Mr. WHITE. Threats had been made as to what would take place if the meeting was held.
Senator CONNALLY. Was that in the newspaper?
Mr. WHITE. Yes.
Senator CONNALLY. What paper?
Mr. WHITE. The Dallas Morning News.
Senator CONNALLY. When was that?
Mr. WHITE. June 1938.
Senator CONNALLY. All right.
Mr. WHITE. The sheriff and the mayor told them they could not prevent the meeting.
Senator CONNALLY. Do you mean to say that the officers protected and defended you?
Mr. WHITE. They told them there was no legal way of stopping it. Threats were made about what would happen if the meeting was held. When I reached the city they told me about it.
Senator CONNALLY. Who did?
Mr. WHITE. The local people who had arranged the meeting.
Senator CONNALLY. Were they colored or white, or were they officials?
Mr. WHITE. We have an interesting situation in Dallas, with whites and colored people in our organization.
Senator CONNALLY. They came to you? These were private individuals? Were they officials?
Mr. WHITE. No. They were members of our Dallas branch.
Senator CONNALLY. All right.
Mr. WHITE. They told me they had to move the meeting to the Y. W. building, away from the Y. M. C. A. building, because the people who had charge of the other building feared there might be trouble. The meeting was held in the colored Y. M. C. A. building.
Senator CONNALLY. And you spoke?
Mr. WHITE. I did speak.
Senator CONNALLY. You were not molested?
Mr. WHITE. No. There were some threats made.
Senator CONNALLY. They did not bother you.
Mr. WHITE. I don't think it would have been wise to do that.
Senator CONNALLY. I asked you if you were bothered.
Mr. WHITE. No.
Senator CONNALLY. I thought not. That is all.
Senator WILEY. I am sorry I was not here when the gentleman began. I must admit that I have not carefully studied the bill. I would like to have your reaction as to just how the enactment of this bill into law would stop lynching.
Mr. WHITE. It is my hope that it would do it in two ways.
Senator CONNALLY. If it would do it in one way, that would be enough.
Mr. WHITE. That is true, but I think there are two ways.
Senator VAN NUYS. Go ahead.
Mr. WHITE. The original draft provided for punishment of the lynchers themselves. The constitutional authorities who were consulted felt that might possibly be construed as an invasion of the police power of the State. That was discussed with Dean Hastie,

and it was thought best to withdraw it. The second section that we believed would be effective was a provision that when a peace officer willfully failed or refused or neglected to protect a prisoner from lynching, that then and only then could the Federal Government step in and act against those police officers for their willful neglect.

Senator WILEY. How would that affect the lynching spirit on the part of the mob?

Mr. WHITE. We need more courageous officers of the law. There have been some instances during the last few years when the sheriff had sufficient courage to save his prisoner.

Senator WILEY. That is not exactly what I am asking for. You believe that would have some effect if the officer would surround himself with more power and perhaps armament, so he could defend against the mob?

Mr. WHITE. Yes, sir. Of course, if a lynching occurs, and he is brought into Federal court, if he can establish that he did everything possible to prevent it, he is not culpable under this bill.

Senator WILEY. Does the act itself provide and make it clear that there must be proof of dereliction on the part of the officer?

Mr. WHITE. I am not a lawyer. I would rather you would ask that question of a lawyer. I don't feel that I am qualified to answer a constitutional question.

Senator WILEY. That is not a constitutional question. I have no preconceived notions about this. I assume that you have studied it.

Mr. WHITE. Yes, sir.

Senator WILEY. Would you say that it would throw the burden on him to establish his innocence?

Senator WAGNER. No; if you prosecute a criminal, there must be evidence establishing his guilt beyond a reasonable doubt.

Mr. WHITE. May I answer the second part of your question?

Senator WILEY. Yes.

Mr. WHITE. I believe an important provision of the bill is in relation to the imposition of a financial penalty upon the county which willfully fails, refuses, and neglects to protect a prisoner. The effect of that is that in many parts of the South—I am a native of Georgia—there are a lot of white people where lynchings take place who do not approve of them, but they are in business and live there, and it is difficult for them to speak out against lynching for fear of reprisals against themselves. They fear they may lose business, and do not speak out against lynching, although a great many of them are opposed to it. Those are the people upon whom a great part of the burden would fall. I think that provision would help to stimulate more courage on the part of officers of the law, and that eventually public opinion would drive lynching out of American life.

Senator WILEY. The thought occurs to me that if a mob began operations in one county, they might cross the line into an adjoining county, and then you might have the offense committed in the latter county, which would be held responsible and forced to pay this penalty. There is that danger in it, as I see it.

Mr. WHITE. It is true that in many parts of the South there are a great many comparatively small counties, and a mob might go from County X to County Y, and commit the lynching in the latter county, and return home to the other county. I realize that is a difficult problem to solve.

Senator WILEY. Under this bill the county in which the lynching took place would be liable.

Senator VAN NUYS. I do not think so. That was in the old bill and was stricken out. Section 2 says "where a lynching occurs." That would really be where they take the prisoner from the sheriff and out of the jail. An effort was made to eliminate that.

Senator WILEY. That may be true, but as I read this over for the first time I do not come to that conclusion. I hope I am mistaken.

I have another idea I would like to have this gentleman discuss. I am interested, of course, in destroying the conditions that make lynching possible. What we have here is an attempt to prevent the doing of certain things which you think might make lynching possible in a given case.

Senator VAN NUYS. I think your point is covered in section 3 on page 2 and also section 2 on page 4.

Senator WILEY. That is another question. In that situation would the Federal Government take charge? Would complaint be made to the Attorney General? Then apparently the Attorney General would turn it back to the Federal district attorney in that area, where you would have a Federal judge. The claim is apparently made that some of the State judges are remiss. You probably would have the same jurors who would try the case in the Federal court that you would have in the local court. I would like to have made clear to me what the difference would be in those two situations.

Mr. WHITE. That is a very valid question, and one which has given all of us a good deal of concern. This proposed legislation would not meet every situation of that kind, any more than does the law against murder have the effect of stopping murder. We feel that the officers of the State court in my own State of Georgia, who are white and elected by white people, would be greatly influenced by that, in the case of protecting a Negro who has no vote.

Senator WILEY. For how long are district judges elected in Georgia?

Mr. WHITE. That I do not know. It varies in different States.

Senator WILEY. I mentioned Georgia.

Mr. WHITE. In the State of Georgia they are elected for a limited period. There is no pressure behind the peace officer to do a good job of protecting a prisoner, if he is a Negro, because of the political disadvantage he encounters when he does it. Many of these lynchings take place in rural areas. In the case of parties I have brought to trial, some of the jurors may have been in the lynching party, or some of the lynchers may have been relatives of some of the jurors. That is a situation you will find in many of those counties. Federal court juries would be drawn from a larger area. Federal court judges are appointed by the President and confirmed by the Senate. They are not dependent upon the votes of the people of the community to retain their places.

Senator WILEY. I want to refer to section 5 on page 3 of the bill, which provides:

> Every governmental subdivision of a State to which the State shall have delegated functions of police shall be civilly liable for any lynching which occurs within its territorial jurisdiction or which follows upon seizure and abduction of the victim or victims by a mob within its territorial jurisdiction.

That would seem to apply whether a man were carried across the line or not.

Senator VAN NUYS. If you will turn to page 5, you will find the following beginning at line 19:

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

I think that would not apply to going across the county line at midnight, where county officers would not know anything about it. That was put in there to obviate the very thing you just suggested.

Senator WILEY. You represent a colored organization, do you not?

Mr. WHITE. It is a national organization, with a membership both colored and white. The membership of the national body is composed of both white and Negro Americans.

Senator WILEY. Do you have representatives in every State of the Union?

Mr. WHITE. In most of them. We have no branches in a few States in extreme Northwest, and States like New Hampshire where there are very few Negroes.

Senator WILEY. I would like to have you State on the record what argument whites in the South have against this. Why are they fearful of this proposed law?

Mr. WHITE. It is my impression, and I have traveled a good deal in the South and am acquainted with a good many, both white and colored, that the people in the South are not against it. The Gallup poll shows 64 percent favoring a Federal law against lynching.

Senator WILEY. Does that relate to this identical bill, or this particular kind of bill?

Mr. WHITE. Yes, sir; it was formerly known as the Wagner-Costigan antilynching bill. That was the late Senator Costigan of Colorado. It is now sponsored by Senator Wagner, of New York, Senator Van Nuys, of Indiana, and Senator Capper of Kansas.

Senator WILEY. Have you any further information in answer to my question, assuming that 67 percent of the whites in the South are in favor of it?

Mr. WHITE. 63 percent.

Senator WILEY. What are the objections of those who are against it?

Mr. WHITE. The chief argument seems to be that it is an invasion of States' rights.

Senator WILEY. I am a novice in the Senate. I wonder if you know of other arguments, and how you would apply them.

Mr. WHITE. There has been so much said on the floor of Congress that has no relation to the bill——

Senator WILEY. Never mind that.

Mr. WHITE. Yet there has been a great mass of material used in filibustering back and forth since 1922. I would say the principal argument is on the question of invasion of States' rights. There is also the argument that the South knows how to handle its own problem better than the Federal Government knows how to handle it. I think that is about all that can be classified.

Senator WAGNER. Speaking of the invasion of States' rights, if a man is charged with an offense, and the record shows that he has not been given a fair and impartial trial according to due process, and he was not accorded the equal protection of the law, under the Federal Constitution the United States Supreme Court takes jurisdiction.

Mr. WHITE. Yes, eventually.

Senator WAGNER. Without any specific legislation, based upon the Fourteenth Amendment to the Constitution.

Mr. WHITE. That is correct.

Senator WAGNER. Take the *Scottsboro case*. That case came up from Alabama to the United States Supreme Court, on the ground that it was a violation of the fourteenth amendment to the Constitution. The Court took jurisdiction, and found that the defendant had not been accorded equal protection of the law. There was a record upon which the Court could act. Now here, as I understand the history of lynching, no such protection was ever accorded to the man who was lynched. He is never brought into court. If he were brought into court and tried, then the United States Supreme Court could determine whether or not the fourteenth amendment had been violated. The difficulty is that through the neglect of some one, the man really charged with the commission of a crime cannot be produced in court. He is taken and lynched without a trial. In one case we have the protection of the trial in court, to determine whether the individual received the protection to which he was entitled under the fourteenth amendment. In the other case there is no such opportunity.

So, as I understand Senator Wiley's suggestion, there might be some difficulty in determining the jurisdiction of the State or Federal court. In the one case, if a man's rights are violated, he has a right to go to the United States Supreme Court and have that question determined. Our complaint is that in these lynching cases there has been no trial. In many instances there has been no effort made to apprehend those who are charged.

Mr. WHITE. That is correct.

Senator WAGNER. Under this act, if such a lynching occurs, if the officer has been criminally negligent in failing to prevent a lynching, then he is guilty of a crime.

Mr. WHITE. That is correct.

Senator CONNALLY. In reference to the fourteenth amendment, about which Senator Wagner asked you, is it not true that in the *Scottsboro case*, and all those cases, the Supreme Court held they were liable, because the State itself, through its jury commissioner, had invaded their rights in not having colored men on the jury? Is that true?

Mr. WHITE. I believe that is correct.

Senator CONNALLY. The fourteenth amendment says: "No State." It does not say "no individual shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

Senator WAGNER. That is true. May I answer that?

Senator CONNALLY. I would rather he would answer it.

Mr. WHITE. Senator Connally, not being a lawyer, I do not feel I am capable of discussing Supreme Court decisions.

Senator CONNALLY. You are Senator Wagner's lawyer here.

Mr. WHITE. I am not good enough to be Senator Wagner's lawyer or your lawyer.

Senator CONNALLY. The fourteenth amendment says "no State." In order for it to be violated there must be State action. Is it not the theory of this bill that you are going to hold a sheriff responsible and say that he shall be liable because he has neglected his duty? Are you not trying to hold the State or county subdivision of the State liable on the theory that it is the action of the State in denying the protection of the law to the individual?

Mr. WHITE. May I have Senator Wagner, who is my lawyer, answer that?

Senator WILEY. Why do not you Senators have this passed on by the Supreme Court?

Senator WAGNER. I think it has been passed upon.

Senator CONNALLY. You said a while ago you took out the clause trying to hold individuals responsible.

Mr. WHITE. Yes, sir.

Senator CONNALLY. Constitutional lawyers said that could not be done. Is it not true that the reason for that was the States, when they were convinced they could not do it, the claim was made that the States were doing it?

Now, Senator, go ahead.

Senator WAGNER. The Senator is absolutely correct.

Senator CONNALLY. I wish to thank you, if I am correct for once. I am glad you have seen the light.

Senator WAGNER. You have just seen the light.

Senator CONNALLY. Did I not state it correctly?

Senator WAGNER. You did.

Senator CONNALLY. Thank you.

Senator WAGNER. That is true.

The question was whether the judge or the district attorney violated the State law, whether, acting in behalf of the State, they violated the right guaranteed citizens under the Federal Constitution.

Senator CONNALLY. Suppose a sheriff shoots and kills a man, murders him. Is he then acting for the State? Suppose he steals the county's money and runs off with it. Is he acting as an agent of the State?

Senator WAGNER. That is not involved in the guaranty of the fourteenth amendment.

The question of violating the fourteenth amendment, which guarantees equal protection of the law, is a question of fact. That has been said by the Supreme Court time and time again.

Senator CONNALLY. I have read them all. I will ask this question, and let the Senator answer it, if he will: Where one goes outside a jurisdiction and authority, is he not under the old law acting ultra vires, and the principal is not responsible?

Senator WAGNER. The simplest way to answer that is to go back to cases like the *Scottsboro case*. The Court said it does not matter, even if he violated a State statute; that they were concerned with whether he had violated the fourteenth amendment and deprived a citizen of the equal protection of the law; that if he had they were not concerned with the possible violation of the State statute. That is the only theory upon which the Court could act.

Senator WILEY. There has been some reference to the Ku Klux Klan and other similar organizations. This thought occurs to me: If a crime takes place by a mob, and the officer having custody of the prisoner is injured, is it your idea that this law could not be applied to such a situation. I think Senator Connally called it "gang murders;" "gang lynchings," if you want to call it that.

Mr. WHITE. In the first paragraph of the bill it states that the act is intended to apply for the purpose of assuring equal protection and due process of law to all persons charged with or suspected or convicted of any offense within the jurisdiction of the State.

Senator CONNALLY. In gang murders or labor disputes, or things of that sort, there has been no charge made that this law would apply.

Mr. WHITE. I am not defending New York because I happen to be a resident. This applies to other cities, North and South. There is a substantial body of public opinion against gang murders. The people are overwhelmingly against them. They insist that the officers of the law do their duty, so there is no necessity, really, of trying to cover the whole range in one bill.

Senator CONNALLY. Can you state how many murders and homicides there were in 1939?

Mr. WHITE. No. I could obtain that figure for you.

Senator WAGNER. If the acts we are talking about here are committed by the agent of a State, that State becomes liable, and is equally guilty. It is liable for the acts of its agents. We all know what we are talking about when we talk about lynching.

Senator CONNALLY. Are you going to make a speech about it?

Senator WAGNER. No.

Senator CONNALLY. We all know what you are talking about. You are not talking about gang murders in New York. You are talking about lynching in the South. You have drawn the law so that a gangster in New York can murder a white man and would not come under the law.

Senator WAGNER. You are mistaken about that.

Senator CONNALLY. No; I am not mistaken. An officer in New York or any other State is guilty of an offense where a mob or gang takes his prisoner away from him and lynches him. That State is liable, whether that is New York or anywhere else. We know where most of these offenses are committed.

Mr. WHITE. May I submit for the record the lynching figures for 1937, 1938, and 1939, as gathered by the national association?

Senator CONNALLY. I would rather have the Tuskegee figures.

Mr. WHITE. This is no disparagement of Tuskegee.

Senator CONNALLY. Tuskegee is the standard and recognized authority. [Laughter from the audience.]

Mr. WHITE. I want to know if I can proceed in order, and not be interrupted by this crowd on the right.

Senator VAN NUYS. The audience will refrain from any expression. You may file those figures with the clerk, and the committee will decide the question in executive session.

Have you anything further to state?

Mr. WHITE. I believe not, sir.

Senator VAN NUYS. Thank you. You may be excused.

STATEMENT OF ARTHUR B. SPINGARN, NEW YORK CITY

Senator VAN NUYS. State your name to the committee, please.
Mr. SPINGARN. Arthur B. Spingarn.
Senator VAN NUYS. Where do you live, Mr. Spingarn?
Mr. SPINGARN. In New York City, 60 Gramercy Park.
Senator VAN NUYS. Are you an attorney at law?
Mr. SPINGARN. Yes, sir.
Senator VAN NUYS. Do you practice in New York City?
Mr. SPINGARN. Yes.
Senator VAN NUYS. How long have you practiced law there?
Mr. SPINGARN. This year it will be 40 years.
Senator VAN NUYS. You are president of the National Association for the Advancement of Colored People?
Mr. SPINGARN. Yes.
Senator VAN NUYS. How long have you been president?
Mr. SPINGARN. Since the 1st of January of this year.
Senator VAN NUYS. Your brother was formerly president, and he died, and you succeeded him; is that correct?
Mr. SPINGARN. Yes, sir.
Senator VAN NUYS. Now, do you have any particular phase of this legislation that you would like to discuss?
Mr. SPINGARN. Well, I would like to read something about the reaction on lynching upon the population of foreign countries.
Senator CONNALLY. What is the paper you propose to read?
Mr. SPINGARN. It is on the effect on foreign public opinion of lynching in the United States.
Senator CONNALLY. The effect on the people of Europe?
Mr. SPINGARN. Yes.
Senator CONNALLY. Have you ever been abroad?
Mr. SPINGARN. I have, quite often.
Senator CONNALLY. Looking into this situation, I suppose?
Mr. SPINGARN. Incidentally.
Senator CONNALLY. What is your business?
Mr. SPINGARN. I am a lawyer.
Senator CONNALLY. Who is employing you to do this?
Mr. SPINGARN. Nobody.
Senator CONNALLY. Who is paying your expenses?
Mr. SPINGARN. Myself.
Senator CONNALLY. You belong to the National Association for the Advancement of the Colored People?
Mr. SPINGARN. I am president.
Senator CONNALLY. Did you have any trouble in being elected president?
Mr. SPINGARN. None whatsoever.
Senator VAN NUYS. All right; go ahead.
Mr. SPINGARN. At no time since the founding of the Republic has democracy been so seriously threatened, attacked, and endangered. Until the rapid rise of fascism and communism, the fundamental principles of democracy were never really seriously questioned, but now loud raucous voices were raised in Europe and Asia ridiculing and vilifying these very fundamental principles.
It is not only meet and proper, but necessary for the United States, as the most powerful and successful exponent of democratic prin-

ciples in the world, to assume leadership in the attempt to preserve for mankind a form of government which we in the United States are unanimously agreed represents the most nearly perfect system of government created by man. That we are assuming this role of leadership is obvious to all the nations of the world, and it would be equally obvious that our success or failure in this attempt will determine largely the future fate of democracy in that world.

In assuming this leadership we have stressed the sanctity of the individual citizen's person in a democracy, our belief in the practicability of a workaday world where all men have their right in court, where no man is adjudged guilty without being given a chance to be heard before a jury of his peers and where every citizen may feel a real protection of his life and property and where "life, liberty, and the pursuit of happiness" is not only a goal but a living reality. Above all, we have repeatedly expressed our indignation and horror at the practice of force and brutality manifested in totalitarian states.

And how do the rulers and spokesmen of those totalitarian states receive our protests? By replying that their treatment of their minority groups, their Jews, their liberals, their labor leaders, is modeled directly after a pattern created and practiced in the United States. Even before the Nazis came into power in Germany their leaders publicly proclaimed their purpose to treat the Jews in Germany as the United States treats Negroes, and that their aim was to reduce the Jews in Germany to the same social and economic status that the Negro has in the United States. And now they tell us that they have taken over bodily (though they insist, more humanely) our methods and that they have mastered our technique.

To every protest that we make of the moral and physical mistreatment of their nationals, they fling in our faces the accusation of hypocrisy and their claim of juster treatment.

I have before me photostatic copies of extracts from two German newspapers from many similar ones. The first is from the October 31, 1935, issue of the Schwarze Korps, and the second from the January 28, 1938, issue of the Voelkischer Beobachter (Herr Hitler's own organ). I read you a translation of an extract from each:

[From the Schwarze Korps]

Hardly anyone is aware (or pays any attention) to the lynch law, which occurs more in the Southern States than elsewhere, as it has ceased to be news. If anything of this kind were to occur in Germany, the entire U. S. A. would be outraged; but that is something else again.

[From the Voelkischer Beobachter]

We very humbly just pointed out that the lynch justice on Negroes and answered that these actions did not very well fit in with the beautiful gleaming soap bubble of democracy, with the equality of humanity and races; these soap bubbles they blow into the azure blue sky and over the ocean.

We German barbarians, as far as we know, do not lynch Jewish race polluters in this inhuman way; we do not even kill them; we just put them in jail after a fair trial; we feed them for years at State expense. But certainly, we are no democrats, and it is therefore that we thought lynch justice out of gear with our nasty customs.

For weeks three old gentlemen fought in the American Senate against the antilynching bills, which provide that policemen who let the people snatch their prisoners away should be punished. They go at their fight, their obstructions, with all parliamentary means. One Senator threatened to talk for

weeks. Others lectured about the genesis of the human being and quoted for hours scientific and entertaining books. And then again the old gentlemen behaved like silly babies. They shout and yell and push and whistle. Just because they think this bill is not democratic and insist therefore that democracy is when a policeman lets the people snatch a Negro away so that he can be successfully lynched. Well, they must know what they consider to be democracy.

We just want to point out humbly that our means of punishment for race pollution is more refined. It was new to us indeed that one thinks lynch justice a special expression for the democratic spirit. Therefore, we wanted this to be pointed out to our readers, but we don't talk against democracy; no; everyone has the right to be happy in his own fashion.

We fully understand the old gentlemen and their sorrows for the honor of the young American women, and just because we are polite we wish them the best success in their fight.

When I was in Germany a few years ago I saw many such articles, not a few with screaming scarelines describing in minute details the horrors of American lynchings and comparing lynching with the civilized methods employed by Nazis. Similar articles publicizing lynchings have appeared repeatedly throughout the world. I have seen such articles copied from Italian, Japanese, Russian, and many Central and South American papers. And many years ago a friend told me of an illustrated lecture on lynching which he had heard delivered by a Turk in Constantinople.

Nor is this criticism confined to countries poisoned by totalitarian propaganda. I have before me a photostatic copy of an excerpt from the Boston Post of November 11, 1937, in which a Boston councilman is quoted as follows:

"The one subject that I am asked about each year as I wander about from rostrom to rostrom, in the world's most famous forum, Hyde Park, London, is the matter of lynchings in America. One energetic old fellow tackled me this year before quite a big group and asked in a tone of voice that could be heard from some distance away: "See here, Yank: Why is it that over 5,200 people have been lynched in America and that in 99 percent of the cases the lynchers go unpunished?"

We should always be aware of the fact that the rest of the world is cognizant of the fact that lynching is a peculiarly American disease, endemic only in the United States.

Senator WILEY. May I suggest this: Are there not a number of other diseases? One is that you can cure these diseases that you are speaking about by legislation. In the last few years, we developed a delusion here that Congress can pass laws to cure nearly all ills. Now, I think everything you have said is right to the point: that folks over there are trying to maximize things over here. But is it your opinion that this bill will have a tendency to stop that?

Mr. SPRINGARN. Yes; I think it will have a tendency to maximize that in Europe.

Senator WILEY. Well, if we stop the lynching, they cannot find that to maximize but they will find something else?

Mr. SPINGARN. No; but it will show them——

Senator WILEY (interposing). No; but the thing you are showing here is that Hitler is trying to get them all in a welting over there, and he is trying to get them to forget things over there by calling attention to something over here. In that way he gets them to do what he wants them to do.

I cannot agree that that is a fair comparison. I agree that mobs sometimes lose their heads. I had an experience of that myself. You do not believe that yourself, do you?

Mr. SPINGARN. No, Senator; I did not read that because it is true; I read it because it reflects European opinion and South American opinion.

Senator WILEY. It represents the expression of certain Nazis over there who had to distract attention from a certain condition.

Mr. SPINGARN. Well, it does not exist only in the Nazi case. But I will continue with my statement.

So that every protest we make against the cruel treatment by other countries of their nationals will continue to be considered by them not an expression of our higher morality but a symbol of our hypocrisy.

I believe it can fairly be said that there is no one single factor that undermines our influence abroad more than the failure of the Federal Government to make a sincere attempt to eradicate lynching in the United States. And no single action persuades the enemies of democracy or gives more aid and comfort than the failure of the majority in our Senate being given the opportunity of expressing by a vote in the Senate the will of the majority of the people of the United States because of a filibuster expressing only the will of a portion of the population of one section of the country.

Nor is our moral influence alone weakened and endangered by the world-wide publicity given to lynching in the United States, but our economic interests are vitally affected as well. Now that the markets of the Allies are largely cut off by the Neutrality Act and the export of all but war materials to them practically cut off, our principal and natural foreign market is in Central and South America.

Senator WILEY. Let me go back a little. Do you compare our moral standards in this country to those overseas, to the detriment of our country?

Mr. SPINGARN. No; but I say the people in Europe do.

Senator WILEY. You spoke of our influence?

Mr. SPINGARN. Yes.

Senator WILEY. Our influence. The only thing we want about that is to see that we do not get our foot in over there. They would like to get over here, and they would like to get their claws into our finances, and they would like to run things over here. But the European mind cannot comprehend the American mind.

Mr. SPINGARN. I think that is a fair statement.

I will resume my prepared statement:

The present inability of the Central Powers to supply these South American markets, by reason of the Allied blockade, gives the United States a golden opportunity to consolidate and enlarge this trade and to hold it for many years to come.

In seeking these advantages, we cannot be unmindful of the fact that the Latin-American countries are not "white" countries, for in those lands the majority of their citizens are colored people of mixed races with a sizable percentage of Negro blood. This is true not only in such countries as Haiti and Santo Domingo, but is largely the fact in many of them, particularly in such a rich market as Brazil, which has had a Negro president, and among whose most

celebrated statesmen, soldiers, scientists, musicians, and authors are numbered many persons who in this country would be identified with the Negro group. In practically all the Latin-American countries the colored element of the population play an important role in their cultural, political, and economic life.

Anti-American propaganda is being vigorously spread throughout Central and South America, and the enemies of democracy never lose an opportunity to publicize every lynching and every obstacle put in the way of stamping it out.

Thus, potentially great damage is being done which may soon crystallize into irreparable damage if not properly corrected. The passage of a Federal antilynching bill at this session of the Congress will do more to check this evil than all the good will that Pan-American conferences can create in 50 years. And without such passage it will be impossible to silence one of the gravest charges justly brought against a great democratic country.

If the Senators would be interested, I would like to show the type of newspapers, the type of propaganda, used in Germany of Kommen Konnten from the newspaper Schwarze Korps [handing paper to Senator Van Nuys].

In connection with the effect that the propaganda has on Central and South American opinion, I want to read a letter, dated February 1, 1940, from Mr. Hubert Herring, Director of Latin-American Relations in the State Department, and probably one of the most traveled men in South American countries. He said he had read many letters which furnish conclusive proof that such legislation should be passed by the present Congress. I will file this letter with the committee [handing letter to Senator Van Nuys].

Senator CONNALLY. Where were you born?

Mr. SPINGARN. In New York City.

Senator CONNALLY. You have lived there all your life?

Mr. SPINGARN. Yes.

Senator CONNALLY. You are greatly interested in conditions in Germany, it appears?

Mr. SPINGARN. I am greatly interested in conditions all over. Primarily, I am interested in conditions in the United States.

Senator CONNALLY. Well, you seem to be greatly concerned with the opinion of other countries about the United States; and I believe you read the opinion of Central and South America. And I believe they are colored races there.

Mr. SPINGARN. Most of them.

Senator CONNALLY. Do you call the Spanish mixed with other blood colored?

Mr. SPINGARN. Yes.

Senator CONNALLY. Do you call the Indians colored?

Mr. SPINGARN. I call them a mixture.

Senator CONNALLY. Well, those who are colored are mostly a mixture of Indian and Negro blood?

Mr. SPINGARN. In most countries. In Brazil, I believe there is a preponderance of Negro blood.

Senator CONNALLY. Is it not a fact that a great part of the people of Central and South America is a mixture of Indian and black blood?

Mr. SPINGARN. Yes.

Senator CONNALLY. Do you think they would give the testimony that you have given here? Do you think they would approve that?

Mr. SPINGARN. I think they would if they thought it was an honest effort. I have spoken to numerous leaders there.

Senator CONNALLY. You live in New York City?

Mr. SPINGARN. Yes.

Senator CONNALLY. How many gang murders have been committed there each year?

Mr. SPINGARN. I do not know.

Senator CONNALLY. Have you applied any time to the enforcement of the criminal laws of New York State?

Mr. SPINGARN. I have not done anything, except that a number of years ago I helped prepare a document.

Senator CONNALLY. Well, you come from New York and that is your native State?

Mr. SPINGARN. Yes.

Senator CONNALLY. And if you take New York City, the man there is as capable of attending to his business as anybody else. If we are from down South, the district attorney will not do his duty, or cannot do his duty?

Mr. SPINGARN. Is that your statement or mine?

Senator CONNALLY. Did you not state that?

Mr. SPINGARN. No, sir.

Senator CONNALLY. It is part of your testimony here.

Mr. SPINGARN. Not my testimony, sir.

Senator CONNALLY. That is all.

Senator VAN NUYS. Senator Wiley?

Senator WILEY. I do not think I have any questions; but your testimony is to the point that, because of these lynchings these totalitarian states—and most of them are totalitarian in South America as well as in Europe—use that fact to the detriment of our standing in those States?

Mr. SPINGARN. That is only part of what I said. I am sorry I did not make myself clearer. I said it endangers the whole principles of democracy. I mean there is very serious question of part of the rest of the world which is now democratic going over to the other camps, and if our moral influence, if correctly administered, is considered a symptom of the happiness and success of the democratic principle, it would naturally help the democracy of the entire world.

Senator WILEY. Then your point is that if this bill is passed you would operate it for the prevention of lynching; and I take it you agree with the gentleman who spoke before you as to how this bill would operate to cure lynching?

Mr. SPINGARN. Yes.

Senator WAGNER. Mr. Spingarn, as a matter of fact, for many years you have worked unselfishly on this, and have given not only your devotion, but you have given your means, a considerable part of your means, in educational efforts along this line.

Senator CONNALLY. I have not heard him say that.

Mr. SPINGARN. Well, I will say that I tried several cases before the Supreme Court of the United States——

Senator CONNALLY. I have heard you say it, Senator Wagner.

Senator WAGNER. Well, I know it and I have told it to the people in trying to bring about a better situation. Mr. Spingarn has been

engaged in efforts to stop lynchings for many years. How many years have you been so engaged, Mr. Spingarn?

Mr. SPINGARN. I should say about 15 years. But that is not the only thing I have been interested in.

Senator WAGNER. Well, I know you have been interested in philanthropic work; and we in New York are proud of you and proud of what you are trying to do.

Senator CONNALLY. The point of your testimony is that lynching is injuring the United States very gravely in Germany?

Mr. SPINGARN. Throughout the world.

Senator CONNALLY. It is also injuring it very strongly in Russia?

Mr. SPINGARN. I do not know that it is.

Senator CONNALLY. You are afraid that our lynching is going to injure the democratic processes in Germany?

Mr. SPINGARN. No; I am not interested in the democratic processes in Germany.

Senator CONNALLY. And also injure them in Russia; that is what you said.

Mr. SPINGARN. No; I said throughout the world.

Senator CONNALLY. Do you believe Germany is a democracy?

Mr. SPINGARN. No, sir. But I believe there is a large number of democratic people there who cannot give expression to their feelings.

Senator CONNALLY. Do you think Germany is a place where democracy flourishes?

Mr. SPINGARN. Certainly not.

Senator CONNALLY. Do you think Russia is a place where democracy flourishes?

Mr. SPINGARN. Certainly not.

Senator CONNALLY. Do you think we are responsible for what those countries think of democracy in the United States?

Mr. SPINGARN. No.

Senator WILEY. You do not think any of the things these witnesses testified to here as to lynching gave Hitler a practical guide?

Mr. SPINGARN. No; but I think he gave it as an excuse.

Senator WILEY. How does that come in?

Mr. SPINGARN. Every time a protest comes from the United States he says, "We treat people better than you do," and the instance cited is lynching.

Senator WILEY. In 1939 there were three lynchings in the United States.

Mr. SPINGARN. I would not say that.

Senator WILEY. Well, the record shows that; and whatever it was Hitler would say that was justification for his acts. You do not think he believes that?

Mr. SPINGARN. No; but I think he is trying to delude the German people. But may I say this? The Senators have referred to 3 lynchings, as though there were 3 criminals that have committed lynchings. The testimony shows that there were probably 5,000 persons involved in those lynchings.

Senator WILEY. We appreciate that, but we cannot stop that.

Mr. SPINGARN. No; but that is a think that should be known.

Senator WILEY. Now, will you state how, in your opinion—you lived in the North but have never been in the South—this would stop this mob spirit and would help the situation?

Mr. SPINGARN. I think it would help. For one thing, the people of the United States are very much interested in anything in which the Government of the United States takes part. People in New York are more afraid of Government action than they are of criminal action. People are more affected by a threat of G-men than by criminals.

Senator WILEY. No; but the criminals here——

Mr. SPINGARN (interposing). I am talking about a mob. Senators referred to the fact that they are unable to get testimony against these lynchers. I have no doubt that if well-skilled G-men went down there they would find very little difficulty in getting all the evidence they needed. Mr. White went down years ago, and got confessions from business people.

Senator CONNALLY. Are you testifying now, or giving your opinion?

Mr. SPINGARN. No; somebody asked my opinion.

Senator CONNALLY. Well, I do not want you to make up your opinion from what somebody told you.

Mr. SPINGARN. I do not know how the Senator makes up his opinion; but I make up my opinion from knowledge.

Senator CONNALLY. Written knowledge?

Mr. SPINGARN. I would unhesitatingly say we had every one in Texas. A man has accepted these facts, and as a fact, and he testifies about them, but he does not know it as knowledge. But I have these facts from sources that I think are trustworthy enough to form an opinion on.

Senator WILEY. Well, you brought up a question here, and that is a deterrent of crimes committed under this bill. Do you mean it is referred to the Attorney General?

Mr. SPINGARN. No, sir; not under the Attorney General.

Senator WILEY. I think complaint was made to the Attorney General.

Mr. SPINGARN. No, sir; not immediately after the crime is committed. It is after a reasonable time has elapsed and the authorities have taken no steps.

Senator WILEY. You do not let me pursue my idea—and I think this is very much your own idea: When that occurs and if they do not suggest it to the Attorney General, it goes to the G-men. Now, I think that would be rather fortunate because everyone respects Mr. Hoover and his G-men; and if G-men get in they will discover who constituted the mob and who started the lynching, and that will have quite an effect.

Mr. SPINGARN. That is right; and I suggest——

Senator WILEY (interposing). Well, Senator Connally suggested that they could not punish; but under the Federal law if the G-men got the evidence, it would be very useful under the State law.

Mr. SPINGARN. Well, there is a certain sentiment grown up which is effective today. For instance, there is a newspaper statement handed me, in which it is stated that there is not a single case in which conviction has resulted in which G-men have not participated. Now, I have no reason to know whether that is true or not. But that kind of thing stated throughout the country would be a very great deterrent.

Senator WILEY. Well, is there anything else that would be a deterrent?

Mr. SPINGARN. Yes. I believe there would be more chance of conviction in case of a jury and a judge not selected from the immediate locality, and not taken from the friends and relatives and voters—people who would have to punish the crime.

Senator WILEY. And you believe, then, that the citizens would feel like you do about that, and that would cause them to hesitate to commit the crime?

Mr. SPINGARN. I do.

Senator WILEY. That is two.

Mr. SPINGARN. And I also feel that the taxpayers and the respectable citizens in the smaller towns, who now do not feel it to their pecuniary interest to protect the law when it was to their interest, because otherwise they would pay more taxes, more taxes than they would otherwise have to pay, would help enforce the law. And if they started before the mob, things would be very much better.

Senator WAGNER. Have you happened to look into a number of State laws?

Mr. SPINGARN. This week I have.

Senator WAGNER. Holding the subdivisions of that State liable for lynching?

Mr. SPINGARN. I have not studied that particular point recently; I did some years ago.

Senator WAGNER. Showing, according to my records, that there are about 23 States now that have statutes holding counties responsible where there has been a lynching or property damage by a mob in that county?

Mr. SPINGARN. That is true. But it is also true that in one of the States that has that law there have been lynchings since the enactment of that statute, and the State statute has not been changed since. I have not the name of the State before me, but it is in the Senate.

Senator CONNALLY. You testified in answer to Senator Wiley that these 3 lynchings in 1939 applied where there were from 500 to 1,000 persons participating?

Mr. SPINGARN. No, Senator; I said previous testimony said from 500 to 1,000.

Senator CONNALLY. If you will look at your testimony——

Mr. SPINGARN. No; I said the previous testimony had indicated that.

Senator CONNALLY. I want to see if you are accurate. Now, here is the report of the Tuskegee Institute, which is probably the most responsible colored institution in the United States, is it not?

Mr. SPINGARN. It is only 1 of the 10 or 12 best.

Senator CONNALLY. Well, the mention of it received the jeers and gibes of this group that is with us today. I told them it was a great institution that was doing a great deal for the advancement of colored people. It says that there was a case in Florida where a man was lynched, there were 5 who took part in that. And at Daytona Beach, Fla., only 2 took part. So that was 7. And in the case of Charlie Rogers they found the body, but do not know how many participated. Now, why do you say that from 500 to 1,000 took part in those 3 cases of lynching?

Mr. SPINGARN. Senator, you are mistaken. I did not say that.

Senator CONNALLY. Well, this testimony showed that.

Mr. SPINGARN. I think it was Mr. White.

Senator CONNALLY. The testimony showed that, but did he say that?

Mr. SPINGARN. I think he did. I think Mr. White knows a great deal about the record.

Senator CONNALLY. Well, in the record shown here there were seven people there; and we do not know how many in the other cases; but you are willing to accept the testimony of Mr. White that there were a large number.

Now, I want to say another thing: You are here for the Association for the Advancement of Colored People—and I have no prejudice against them. Now, you are talking about the organization. Do you not think also it would be good service to turn to something that would stop these crimes of raping a girl? Would that not be a deterrent to lynching also?

Mr. SPINGARN. I do not want people to commit crime, but in the cases I cited not a single——

Senator CONNALLY (interposing). You heard the testimony yesterday as to the girl that was killed?

Mr. SPINGARN. I heard it.

Senator CONNALLY. You heard of the two boys that were in a lynching?

Mr. SPINGARN. I heard.

Senator CONNOLLY. Do you claim that there is no crime involved in those cases?

Mr. SPINGARN. I believe that no man is guilty until he is adjuded by proper court to be.

Senator CONNALLY. Your testimony is that no white woman in the South has ever been raped, and no white man has ever been murdered?

Mr. SPINGARN. I did not say that. I said there was no proof.

Senator CONNALLY. I think the newspapers will be very glad to get that.

Senator WAGNER. What you mean is that the accused never had a fair trial?

Mr. SPINGARN. Yes; I do not know whether he is guilty or not. It is assumed under our rule of justice that he is innocent.

Senator WAGNER. There are 12 States which provide liability for a county in which a lynching occurs. In a number of these States mere proof of mob injury or killing is sufficient. Among these States are Kansas, Illinois, New Jersey, Ohio, South Carolina, West Virginia, and Wisconsin. Among the States where it is necessary to show negligence are Connecticut, New York, Pennsylvania, and North Carolia.

Then an observation is made in the book of Professor Chadwick of North Carolina showing the result of his researches. In one State, "each county which has been fined has had no more lunchings."

Senator VAN NUYS. Is that all? We will call one more witness. We will call William H. Hastie.

STATEMENT OF WILLIAM H. HASTIE, DEAN OF HOWARD UNIVERSITY LAW SCHOOL, WASHINGTON, D. C.

Mr. HASTIE. Mr. Chairman, before I proceed, I understand that there is one more witness to testify to the factual situation. My tes-

timony is to be confined to the legal phases; and I would like to know if the committee desires to hear that witness before it hears me.

Senator VAN NUYS. We will hear you now. State your name to the committee, please.

Mr. HASTIE. My name is William H. Hastie.

Senator VAN NUYS. You are dean of The Howard University Law School?

Mr. HASTIE. That is correct.

Senator VAN NUYS. Located here in the city of Washington?

Mr. HASTIE. That is correct.

Senator VAN NUYS. How long have you been dean?

Mr. HASTIE. Regularly since 1917.

Senator VAN NUYS. And you desire to testify concerning the constitutional issues presented by this legislation; is that correct?

Mr. HASTIE. That is correct.

Senator VAN NUYS. We will be glad to have you do so.

Mr. HASTIE. I would like to preface my remarks by saying that the courtesy of proceeding without interruption has been presented to the witnesses. However, I am going to speak as to the legal aspects of the bill, and no doubt you would like to ask questions and may desire to have interruptions; and I will welcome interruptions during my statement.

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

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

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

Senator WILEY. Well, is it your opinion that, irrespective of the constitutionality of it, that the bill if it became law would operate as a deterrent to lynching?

Mr. HASTIE. That is my sincere conviction; and I would like to add one thing to what has already been said concerning the deterrent effect. The proof in the deterring is in the deterrent, I think.

At the time, 2 years ago, when similar legislation was pending in Congress, there were several cases of averted lynchings; and the public press contained statements of peace officers and other citizens addressing the mob; and the gist of these items was: "Do not do this lynching. It will have an effect upon the efforts of the people who

are trying to pass the antilynch law in Congress." It is my suggestion that if the mere fear of Congress prevents lynching, how much more would the actual passage of the bill? And I would like to refer to two newspaper statements in which the statement was made that the pendency of the bill did operate to avert lynching.

The first was a quotation, from the New York Times of January 12, 1938. It says:

Opposition of southern Congressmen to the antilynching bill was used in a successful plea against mob action by a Southern planter whose wife had been choked by a Negro.

The other is from the New York News January 17 of the same year, with an Atlanta date line. The article cites four instances of action by officers in the time immediately preceding in averting lynching.

It is my judgment that the threat of an antilynching bill being the deterrent of this lynching indicated that the actual law would be a far greater deterrent. I add that observation to the statements that have already been made concerning the deterrent effect there.

To proceed, then, with my discussion.

The fundamental premise of this bill may be stated as follows: It is the duty of every State, and every governmental subdivision of a State exercising police power, to provide for every person charged with wrongdoing orderly legal processes for determining whether the suspected person is guilty or innocent, whether he merits punishment or exoneration, and if he merits punishment what punishment he shall receive. And if the State or its governmental subdivision denies to or withdraws from any such person the protection of constituted authority and of the orderly processes of law, then that State has denied him due process of law and the equal protection of the laws. Up to this point I believe all competent lawyers, whether they favor or oppose this bill, are agreed.

Indeed, I believe that all will agree that if a State should by statute prohibit peace officers from using force to protect any person accused of crime or in custody from mob violence, or should by statute prohibit the punishment of such a mob, the State would by such action deny the equal protection of the laws and due process of law to the class of persons thus deprived of safeguards.

And indeed, in the *Civil Rights cases*, 109 U. S. 8, the Supreme Court in enumerating some things that would clearly be violations of the fourteenth amendment included a State statute which would permit conviction and punishment of accused persons by a posse rather than by the fundamental processes of law.

If it would be a dereliction of State duty for the legislature to order that there be no protection against mob violence; it is just as much a dereliction of State duty for the peace officers and other administrative functionaries of the State to accomplish the same result by failure and refusal to protect from mob violence or to apprehend and punish the mob. As the Supreme Court has said in *Yick Wo v. Hopkins:*

Though the law itself be fair on its face and impartial in appearance, yet if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution (118 U. S. 356).

Or as the Court said in a later case:

> The law of the State is not challenged but its administration is complained of. * * * Such an actual discrimination is as potential in creating a denial of equality of rights as a discrimination made by law (*Torrence* v. *Florida*, 188 U. S. 519).

In addition to what the Supreme Court has said, it is important to consider what it has done in cases where the failure of State officers to do their duty is complained of as a denial of equal protection of the law or due process of law, even though the statutes of the State are unobjectionable.

In the first appeal in the *Scottsboro cases*, the Supreme Court held that the failure of the trial court to provide adequate counsel for the defendants was a violation of the fourteenth amendment. The Court said:

> The failure of the trial court to make an effective appointment of counsel was likewise a denial of due process (*Powell* v. *Alabama*, 287 U. S. 45).

I would like to stop here and answer a question that was raised by the Senator from Texas. Certainly, if such a judge went out of the court and committed a robbery the State would not be involved; he would not be acting within the sphere of official duty. It is only when a person acts in a manner covered by his official function that the prohibitions of the fourteenth amendment apply. Only then is he functioning as an authority of the State.

The Supreme Court held in the second *Scottsboro case* that the failure of the jury commission to include any Negroes on the jury panel was a violation of the fourteenth amendment (*Norris* v. *Alabama*, 294 U. S. 587).

The failure of the University of Missouri to admit a duly qualified colored student to its law school was held to be a denial of equal protection of the law in a decision of the Supreme Court as recently as 1938 (*Missouri ex rel Gaines* v. *Canada*, 305 U. S. 537). There again, if the registrar of the University of Missouri went out and committed some crime in the community, obviously he is not within the area of his official position; and no State action can be involved, but so long as he remains within the area prescribed by his official duties, whether his wrong is misfeasance or nonfeasance, or whether he acts affirmatively; or fails to act when a duty exists, he acts as a State official, and the fourteenth amendment is applicable.

The failure of a trial judge to grant a change of venue, when a fair trial was impossible, constituted a denial of due process in *Downes* v. *Dunany*, 53 F. (2d) 596. Accord: *Moore* v. *Dempsey*, 261 U. S. 86.

These cases are cited because they are so recent. But throughout the history of the fourteenth amendment the Supreme Court and other Federal courts have consistently and plainly stated that failure or refusal of State agents and State agencies to act can be just as much a denial of equal protection as affirmative action can be.

One further observation may be helpful before passing to another aspect of the bill. If the judge on the bench refuses the accused the benefit of counsel, there is no doubt but that the State has denied him due process of law. If the jury commission excludes the names of all members of the same race as the accused from the jury list, there is no doubt but that the State has denied due process of law. If the sheriff keeps the accused in his cell and does not

have him in court for his trial, there is no doubt but that the State has denied the accused due process of law. How much more, then, has the State denied the accused the equal protection of the laws when its officers have turned the accused over to the mob or refused to protect him from the mob so that he is denied not just one element of a fair trial, but the entire process of trial? Certainly, the denial of all legal process is a denial of due process. The denial of any protection is the denial of equal protection.

The argument to this point has been addressed to the question whether the failure or refusal of State officers to act as described in the present bill is denial of due process of law and equal protection of law by the State. In my judgment, the answer must be and is clearly in the affirmative. It remains to consider what Congress can do about such a situation. And here the answer is that Congress can do anything within reason to protect any constitutional right. The Supreme Court has repeatedly affirmed the power of Congress to determine the method of protecting a Federal right once the existence of that right is established. Thus in *United States* v. *Reese*, 92 U. S. 214, at page 217, the Court stated the principle as follows:

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

But, beyond this general power, the fourteenth amendment explicity states that—

> The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Certainly section 3 of this bill provides an appropriate and reasonable method of dealing with this denial of constitutional right. Section 3 punishes the officer who permits a lynching by failure or refusal to perform his sworn duty. The propriety and constitutionality of such a method of dealing with the failure of an officer to accord equal protection of the law was settled by the Supreme Court in *Ex parte Virginia* (100 U. S. 389), where the Court sustained the constitutionality of a statute making it criminal for any State officer—the actual case involved a county judge—to fail to summon any citizen for jury because of his race or color. More recently, under authority of Federal law, State election and registration officials have been punished for failure and refusal to permit Negroes to register and vote. Thus, there is ample precedent to support the penalty upon delinquent officers under section 3, and there is no precedent opposed to such a penalty.

Section 4 provides for Federal investigation of lynching whenever an affidavit is submitted to the Attorney General showing there has been a violation of this statute. Obviously, if the Federal Government has any authority to deal with the situations contemplated by this bill, the Department of Justice must have power to investigate to determine whether there is persuasive evidence of a violation of Federal law.

Section 4 provides for an investigation by the Attorney General upon complaint to determine whether a violation has been committed.

In section 5 there is provision for liability upon the subdivision

whose officers have neglected or refused to protect the accused from mob violence.

Senator WILEY. What is your interpretation of section 5?

Mr. HASTIE. I have it here.

Senator WILEY. Refer to it. It has this language:

> Every governmental subdivision of a State to which the State shall have delegated functions of police shall be civilly liable for any lynching which occurs within its territorial jurisdiction—

that that language is limited by subsection 4 of section 5?

Mr. HASTIE. I understand that subsection 4 concerns the matter of liability of the county.

Senator WILEY. Where does it say "liability of the county"? It says:

> Any peace officer or officers of the defendant governmental subdivision after timely notice of danger of mob violence failed to provide protection for the person subsequently lynched, or (b) that apprehension of danger of mob violence was general within the community where the abduction or lynching occurred, or any other circumstance or circumstances from which the trier of fact might reasonably conclude that the governmental subdivision had failed to use all diligence to protect the person or persons abducted or lynched, shall be prima facie evidence of liability.

Now, if it is at all limited it is by this last provision. You say it is subsection 4. I say that subsection 1 of section 5 makes the municipality liable for a lynching occurring in that municipality. I would like to get your judgment on that.

Mr. HASTIE. My first observation is that if you will read subsection 4 you will see——

Senator WILEY (interposing). Where is that?

Mr. HASTIE. I have it before me. This is H. R. 801 as submitted to this committee. Is the Senator from Wisconsin reading from that or from the Senate bill?

Senator WILEY. H. R. 801.

Mr. HASTIE. Page 5, line 19, subsection 4; that is the beginning of this. Now, it says, "In any action instituted under this section," you will observe. And you will observe that the only actions instituted under this section are actions against the county. The derelictions of county officers are described in (a), (b), and (c). And this gives prima facie evidence that the officer has not performed his duty. I may say that it gives him a chance to show that the county did not have a fair chance to prevent this lynching.

Senator WILEY. Yes. I had not examined this very carefully. I see it refers to governments under this section, and that refers to governmental action.

Mr. HASTIE. That is correct. I was addressing myself to the point that it was immaterial what the State laws may impose under this legislation; it is the Federal law which will determine what the liability is.

Now, one of the best examples of the power of the United States to subject a municipal corporation to liability appears in admiralty law. A typical situation would arise when a fireboat of the City of New York, a part of the municipal fire-fighting apparatus, negligently rams a privately owned vessel in New York harbor. The Senator from New York will bear me out in this. Under the law of New York, the municipality is exempt from liability for such negli-

gence of its employees. But under the admiralty law of the United States no such exemption is recognized. The City of New York is held to be liable because the Federal law so provides, even though the local law plainly exempts the city from liability. See *Workman* v. *New York City*, 179 U. S. 552; *O'Keefe* v. *Staples Coal Co.*, 201 Fed. 131.

A further question concerns the enforcement of a judgment against a municipal corporation under section 5. It is expressly provided in that section that payment "may be enforced by any process available under the State law for the enforcement of any other money judgment against such a governmental subdivision."

Senator WILEY. Well in this New York case you speak about, saying there was an action brought by the owner of the vessel: An individual brought the action, but not in the Federal court, against the municipality?

Mr. HASTIE. That is correct.

Senator WILEY. All right. Now, this question occurs to me, and you may possibly have studied it: Here is the statute that creates the liability; and it says then it becomes the duty of the Attorney General to sue on behalf of the individual to obtain a penalty. Why is there any such provision?

Mr. HASTIE. I may say that the suit may be brought either by the Attorney General or by private counsel retained by the person injured.

Senator WILEY. But brought in the name of the United States?

Mr. HASTIE. Yes, sir. Note the language beginning in line 16 and following on page 4:

Such action shall be brought and prosecuted by the Attorney General of the United States or his duly authorized representative in the name of the United States for the use of the real party in interest, or, if the claimant or claimants shall so elect, by counsel employed by the claimant or claimants—

And so forth.

So there is the alternative.

Senator WILEY. In either case it would be in the name of the United States?

Mr. HASTIE. I do not think so. That has not been my interpretation. My interpretation would be that if suit is brought by private counsel it would not be in the name of the United States. But that is snap judgment. It had not occurred to me whether it would be in the name of the United States or not. In fact, it is a procedural device in the caption of the case, which I believe would make no difference in the substantive right.

Senator WILEY. Would the matter be determined by a determination under the Federal law or under the State law?

Mr. HASTIE. That was a matter that I was addressing myself to in this admiralty situation. But any right created by Federal law would be determined by Federal law. Ordinarily it would be the State law. But the substantive right would be the right given under this bill.

To proceed, I was addressing myself to the problem of enforcement of the judgment. I will go on from where I left off.

Thus, whatever process would be available to a contractor who has recovered a judgment against the city, or a person who had re-

covered judgment against a county for back salary would be available to a successful plaintiff here. This would not mean a levy upon the courthouse or the fire apparatus or the money appropriated for public salaries. In all States property and funds used or appropriated for or to public purposes are exempt from attachment. In some States attachment can be levied against municipal property not held for governmental purposes. In other States a municipality may be required to include the amount of a judgment in its next tax levy. In still others, the competent officers of the city or county can be required by mandamus to issue warrants to judgment creditors.

But the important thing is that the person who would get a judgment under section 5 would be neither better off nor worse off than any other person who might get any other money judgment against a city or a county in that State.

I believe the Senator from Wisconsin will remember that there is some such provision as to including the judgment in the next tax levy in the State of Wisconsin.

Senator WILEY. Yes; I know that.

Mr. HASTIE. I will proceed with my statement. Finally, something might be said about the vague and general contention that the provisions of this bill infringe upon State rights. The Senator from New York has spoken on this matter, and I would like to say a few words about it.

It may not be amiss to point out that the Federal Government exercises similar and even more drastic authority without being thus condemned. In title 50 of the United States Code, section 203, there appears an interesting provision entitled, "Denial by State of equal protection of laws." It is there provided that if "insurrection, domestic violence, unlawful combinations or conspiracies in any State" so hinder the execution of the laws as to deprive any portion or class of the people of any Constitutional right, and if "the constituted authorities of such State are unable to protect, or, from any cause, fail in or refuse protection of the people in such rights, such facts shall be deemed a denial by such State of the equal protection of the laws." Then the section proceeds to make it the power and duty of the President of the United States in such a case to employ the Army, Navy, or militia as he may deem necessary to suppress such domestic violence.

Senator WILEY. What is that section?

Mr. HASTIE. That is section 203 of title 50, the United States Code. Now, here is a provision for the most extreme form of Federal intervention, the intervention of Federal troops whenever the President finds that the breakdown of law and order in a State has resulted in the denial of equal protection of the laws to any portion of the population. This power has not lain dormant. The Executive has employed it most frequently in rioting and other disorders incident to labor disputes. As recently as 1914, President Wilson invoked this power in connection with discord in Colorado. Before that, President Cleveland and President Harrison had not hesitated to use this extreme manifestation of Federal authority. Certainly, by comparison the present measure is mild and wholly inoffensive.

But comparisons aside, the State-rights argument applied to this legislation ignores the essential character of our Government. We

are not 48 nations. When the 13 colonies joined together and became one nation, they made the national law the supreme law. In order to become one nation they relinquished certain powers and subordinated their independent powers to the national authority in important particulars.

Moreover, from time to time as the national welfare and the better protection of the individual have seemed to require, the States have, by the orderly process of constitutional amendment, surrendered to and conferred upon the national Government additional powers. When the Congress as the legislative arm of the Federal Government exercises such power, it does not infringe State rights. It exercises Federal right; it does that which the States have empowered it to do; it acts pursuant to the Constitution of the United States in contravention to which there are not and cannot be any State rights.

I shall be happy to answer any questions as best I can.

Senator WILEY. One question suggests itself to me, on page 4, and I want to get your reaction: The provision that in case death results then the damage would be not less than $2,000 nor more than $10,000 as monetary compensation for such injury or death. What rule of damages would apply?

Mr. HASTIE. Do you mean damages under State or Federal law?

Senator WILEY. Yes; whether you would have the Federal rule or the State rule; or whether the Federal provision would open it up so that it is entirely up to the court, the judge, or the jury trying this matter arbitrarily to determine? In other words, is it the pecuniary loss to the beneficiary, or is there some other test?

Mr. HASTIE. My answer to that is that a minimum has been set of $2,000.

Senator WILEY. I agree to that.

Mr. HASTIE. Now, whether it would be arbitrary or not, it would be a fact for the court to determine in exactly the way it would determine in any accident suit. Take the wrongful-death statute, or any other statute.

Senator WILEY. That is what I am going to do. Would it be less than $2,000 pecuniary loss? In other words, in this provision should we not be more definite as to what law should apply? You see, in my State we have changed the law. We have included a certain amount if a child is injured, and loss of companionship. Now, that is not the common-law rule. Now, you have got in this bill not less than $2,000 nor more than $10,000; and if you were to put in there actual monetary loss, pecuniary loss, then you would have probably your monetary rule; and I do not know what the rule would be.

Mr. HASTIE. My construction would be—and I may be in error about this—that a court starting with a minimum of $2,000, would then apply the common law as to any matter in excess of $2,000, and would so instruct the jury that "If you find the State liable it is liable for $2,000; but beyond that it cannot be allowed unless you feel that there are facts which justify that."

Senator WILEY. The amount of compensation could be recovered?

Mr. HASTIE. Well, I should certainly defer to the judgment of the Senator on that.

Senator VAN NUYS. Well, it says "monetary compensation."

Senator WILEY. Well, if you have this common-law rule, I have no objection to it.

Mr. HASTIE. I believe the Senator from Indiana has added something of significance. The language here is "monetary consideration." So that would further indicate that you follow the common-law rule—that it would be a matter of actually what were reasonable compensatory damages.

Senator WILEY. No; that is not what happens. It says, "$2,000 and not more than $10,000 in monetary compensation." It does not lay down any rule. That means to give arbitrary power to the jury. That is a thing that is worth looking into.

Mr. HASTIE. Well, it is my judgment that the Senator's clarifying suggestion is desirable at that point.

Senator WILEY. I am through.

Senator VAN NUYS. Senator Connally?

Senator CONNALLY. I have no questions.

(Discussion off the record.)

Senator VAN NUYS. Now, this additional witness you speak about, Mr. Hastie—the committee will reconvene upon call and it will be announced; and if you will leave the name with the clerk of the Judiciary Committee we will call the witness.

Mr. HASTIE. I understand the Senator has the name of the witness, Mr. John P. Davis.

Senator VAN NUYS. The subcommittee will adjourn, to assemble upon call.

(Thereupon, at 5:07 p. m., the subcommittee adjourned.)

215840—40——7

CRIME OF LYNCHING

TUESDAY, MARCH 5, 1940

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

The subcommittee met, pursuant to call, in the caucus room, 318 Senate Office Building, at 10:30 a. m., Senator Frederick Van Nuys (chairman) presiding.

Present: Senators Van Nuys (chairman), Neely, Connally, Austin, and Wiley.

Senator VAN NUYS (presiding). The committee will please be in order. This is a continuation of a public hearing on H. R. 801, the antilynching bill.

Mr. Davis of Washington has asked to be heard, and we will hear him at this time.

STATEMENT OF JOHN P. DAVIS, NATIONAL SECRETARY OF THE NATIONAL NEGRO CONGRESS, WASHINGTON, D. C.

Senator VAN NUYS. State your name.

Mr. DAVIS. John P. Davis.

Senator VAN NUYS. Where do you live?

Mr. DAVIS. Washington, D. C.

Senator VAN NUYS. What position do you occupy?

Mr. DAVIS. I am national secretary of the national Negro Congress.

Senator VAN NUYS. You will have to talk a little louder.

Mr. DAVIS. I am national secretary of the National Negro Congress.

Senator VAN NUYS. How long have you occupied that position?

Mr. DAVIS. Four years.

Senator VAN NUYS. Briefly, what is your organization?

Mr. DAVIS. The National Negro Congress is a federation of Negro organizations throughout the country, local, State, and National, federated into local organizations in 72 localities and 38 States. Affiliated with us are approximately 2,800 of such organizations. Our purpose is to improve the economic, social and citizen status of Negro citizens of this country.

Senator VAN NUYS. Is it a private corporation?

Mr. DAVIS. It is not incorporated. It is an association.

Senator VAN NUYS. If you have any contribution to make along the line of the subject before this committee, we will be glad to hear you.

Mr. DAVIS. I attended the previous hearings, and believe I can be brief, and will not touch on a good many points that were cov-

ered at the previous hearings. I will not take your time to go over those points that have been previously covered. It is not my purpose to discuss the constitutional aspects of the bill. That has been ably done by Judge Hastie, in a very capable manner. Nor is it my purpose to deal with the many features of the bill, except one which has been constantly coming up.

The question that I propose to deal with is whether there is or is not an abatement of lynching in this country, and whether or not it is true that no Federal legislation is necessary because the crime of lynching is passing out. I want in the course of my testimony to give you some factual material which I think will conclusively prove not only that lynching is not on the decrease but actually that the tendency toward mob violence has increased.

It will not be my purpose to engage in hearsay or present to you a compilation of newspaper clippings. We are concerned with giving you the facts.

There is one thing I feel I must mention before I begin my statement. In my statement I will include a number of facts brought out through an investigation of this subject, made by a competent investigator. I am willing to turn these reports over to the committee with the understanding that they will not become a part of the record, for the reason that the life of this investigator would be in jeopardy if he were again in that vicinity.

With that preliminary statement, if the chairman will permit me, I would like to read to the committee a brief prepared statement containing a discussion of the single point I have mentioned.

I represent the National Negro Congress, an organization composed of several thousands of affiliated organizations. We most earnestly recommend to this committee that it make an immediate favorable report on this bill to the United States Senate.

Polls of public opinion, resolutions adopted by hundreds of thoroughly representative organizations, the passage of the bill by a large majority in the United States House of Representatives—all are reflections of the fact that the overwhelming majority of the American people favor the immediate passage of the Wagner-Capper-Van Nuys antilynching bill in its present form.

At hearings before this committee at previous sessions of Congress, and at this present hearing, the need for the present hearing, the need for this legislation, the constitutionality of the proposed bill, the essential justice of the legislation have been discussed completely and competently by expert witnesses. There is little need for me, therefore, to unduly prolong consideration of the bill by lengthy testimony.

Indeed, I have only one purpose in testifying at all. That purpose is to expose the fallaciousness of the reasoning of the opponents of the bill, who declare that lynching as a crime is on the decline, and that hence no Federal legislation is necessary.

Much has been made of late of the statement that only five—some reports say three—American citizens were murdered by brutal un-American lynch mobs in the year 1939. This is offered as testimony that lynching is no longer a problem of national importance. It is our contention that persons who reason in this fashion either deliberately or ineptly hide the real trends toward mob violence in this country today.

Lynching—that is, acts of violence by a mob resulting in the death or maiming of a person—is only the most acute form, the ultimate

product of mob violence. But other forms of mob violence are also pernicious. The beating, flogging, terrorizing of individuals by mobs, are acts which always contain in themselves the danger of more serious consequences to mob victims. Thus it is not lynching alone, but the lynch spirit, which threatens the peace and security of minority groups in America. This is the crux of the problem. It is through fear engendered by the fact that mobs are permitted to pursue their ugly purposes, even to the extreme of murder, without punishment, which is an important reason for the passage of this bill. It is the fear that at any unsuspected moment a mob may come to his house and drag him out and burn him at the stake which robs every Negro citizen of a feeling of security and peace of mind to which he as an American citizen is justly entitled in our democracy.

The passage of the bill, acting as an effective Federal Government deterrent to lynch-minded criminals, would do much to allay this fear, would do much to promote the feeling of freedom among the masses of Negro Americans. To put it another way: Every time a Negro is lynched in America the whole Negro people shudder with justifiable fear and apprehension, the whole Negro people are lynched in spirit. This is the reason for the deadly seriousness with which the representatives of the Negro people approach you on this important matter.

It is in the light of this consideration that I now wish to demonstrate to you that the lynch spirit in America has not abated, even though statistics as to actual mob murders have shown a decrease. Mob violence in America in 1939 took a sharp turn upward.

In order to be concrete, to present factual and not hearsay evidence, I confine myself to what happened in the months of October and November 1939 in the State of South Carolina. In these 2 months masked bands of members of the Ku Klux Klan, carrying burning crosses, rode through Negro sections of the cities of Greenville and Anderson, S. C., no less than 20 times. Let me read you a short clipping from the Greenville Daily News for November 22, 1939:

COUNCIL "REQUESTS" CHIEF SMITH TO "ASK" KLAN NOT TO PARADE "SO MUCH"

City council went on record last night as "requesting" Chief of Police J. E. Smith to "ask" the head of the Ku Klux Klan not to parade "so much" in the Negro districts of the city.

Alderman J. Mason Alexander made the motion which was passed unanimously by the city council.

"I have been asked by some of our colored citizens to ask the Ku Klux Klan not to parade so much in their neighborhoods," Mr. Alexander said. "I wish to make a motion that we request Chief Smith to contact the head of the Klan and ask him to give them a little rest."

Asked after council met what would take place if the Klan did not choose to accede to Chief Smith's request, Mayor C. Fred McCullough said, "The law will be enforced." He did not elaborate.

Fred V. Johnson, of Greenville, "the only unmasked Klansman in South Carolina," is chief of staff of the Klan in the State and official spokesman of the organization.

Now let me give you a picture of what happened on occasion when the Ku Klux Klan rode through Negro sections of these towns. On the night of November 7, 1939, Elrod Neely, president of the Negro Disabled American World War Veterans was forcibly taken from his home in Greenville, by armed and hooded Klansmen, severely beaten, and finally left naked on the front porch of attorney Joseph Tolbert, Jr., formerly United States district attorney for the western

district of South Carolina. What was the crime of Elrod Neely? He had written to the local newspaper insisting that Negroes were entitled to vote in the city elections.

On November 15, 1939, between 30 and 50 Klansmen broke into the home of a 69-year-old Negro school teacher, Mr. James A. Brier, of 217-A South Calhoun Street. They did not find him at home, so they went first to the home of his niece, Mrs. R. E. Singleton, of 211 Dunbar Street, and forced their way into her house in Dunbar Street in search of Mr. Brier. Then they broke into the home of Mrs. Hattie Cureton, 209 Dunbar Street. Then they broke into the home of the invalid brother of Mr. Brier, again terrorizing the inmates and seeking for their intended victim.

What was Mr. Brier's crime? He had written a letter to the newspapers protesting the activities of the Klan in preventing Negro citizens from registering to vote.

When the Klansmen came to Mr. Brier's home, a Negro friend of his called Chief Detective Hammond of the Greenville police force for protection. Mr. Hammond sent a few officers down. The leader of the Klan, when asked to move on, told the police officers that they (the Klansmen) were there first and would be the last to leave. Then the police officers left the scene.

In Anderson, S. C., the Klansmen paraded through the Negro neighborhood in November. They entered Negro stores, which they robbed of pistols, cash, candy, cigarettes, or anything else they could lay their hands on. They lined Negro occupants of these stores up against the wall and flogged them. They burned crosses in front of these stores and forced the owners to stand by and watch them. Fred V. Johnson, openly known as the leader of the Klan, was leader of the procession and during the course stood in the middle of a busy street, took off his hood and directed traffic. But even though he is known, as are several other Klan leaders, these acts remain unpunished.

In Fountain Inn, S. C., during this same period a number of Negroes were flogged by Klansmen; and one Negro woman was stripped and beaten by them.

In Lexington County, S. C., robed Klansmen went on Federally owned land to a colored N. Y. A. camp and terrorized Negro children by burning fiery crosses and posting signs which read, "Niggers, your place is in the cotton patch."

Not a single person has been punished for these or for scores of similar instances that occurred in this area in October and November 1939. The entire Negro population in these communities has been victims of recurrent mob violence.

Nor is there any likelihood that local authorities will ever take any effective steps to punish these deprivations of citizenship rights of Negroes. For the head of the Klan, Fred V. Johnson, makes his headquarters in the office of Sheriff John Martin of Greenville. And most of the members of the police force are members of the Ku Klux Klan.

It is clear from this recital that there has been a resurgence of mob violence in this area of South Carolina. But statistics on lynching would show that there has not been a lynching in this area for over 2 years. Which bit of evidence will give the clearer picture of true conditions in this area—the evidence that there have

been no lynchings—or the evidence I have just presented to you? I think the answer to this question is obvious.

But South Carolina is not alone in giving evidence of a resurgence of the lynch spirit in America, especially since the unfortunate filibuster on the antilynching bill when it was last debated in the United States Senate. Last May in Miami, Fla., robed Klansmen used methods similar to those described above in an effort to terrorize the Negro community to prevent them from exercising their constitutional right of voting.

In Memphis, Tenn., Klan activities are on the increase with Klan officers advertising in the daily press for members. In Atlanta, Ga., less than a year ago the Ku Klux Klan staged a series of daylight kidnapings on the main thoroughfares of that large southern city. In Aberdeen, Wash., Klan members forcibly broke up a labor meeting.

Legislation such as this serves as a symbol of the power of the Federal Government, a declaration of the Federal Government to see that the democratic guaranties are available to Negro people, under the Constitution of the United States. In many cases, I am frank to state, there will be little protection afforded under this law; but there is a larger protection which may come from the Federal Government that will afford relief to the Negro.

These evidences of mob violence in 1939 indicate clearly how fallacious is the reasoning of those who restrict their study of lynching to instances of actual murder. Such an approach hides the real picture of the problem the Negro citizens faces in attempting to exercise the most ordinary privileges of his citizenship.

Those of us who appear in support of this bill do so because we believe that democracy works. We believe Negro citizens are entitled just as other citizens to the full protection under the law. The dead bodies of hundreds, the flogged bodies of thousands, are ample evidence that local authorities in many southern areas either cannot or will not give Negro citizens this protection. That is why Federal protection is necessary. That is why we ask you to speed the passage of this bill.

Senator CONNALLY. Would you favor extending that law so as to cover the Klan activities you mentioned awhile ago?

Mr. DAVIS. Senator Connally, I think we have laws on the statute books at present to deal with that situation.

Senator CONNALLY. That is not an answer to my question. If you do not want to answer it, that is all right.

Mr. DAVIS. I wish to answer it.

Senator CONNALLY. I asked you, Do you favor the application of this law to the activities of the Ku Klux Klan? You know whether you do or not.

Mr. DAVIS. The answer is "yes" to a question like that.

No; for the same reason given by Mr. Walter White, that gang murders are punished in New York rather severely.

Senator CONNALLY. Do not statistics show that a small percentage of murderers are convicted?

Mr. DAVIS. I call attention to the testimony of Mr. White.

Senator CONNALLY. I do not care about that. You do not want to include gang murders?

Mr. DAVIS. That is correct.

Senator VAN NUYS. You may be excused. I have here what purports to be a communication addressed to "To Whom it May Concern," and signed by Earl Browder, general secretary, Communist Party of U. S. A., introducing a representative of the Communist Party and authorizing him to represent that party at these hearings.

I have here some clippings from newspapers, with a statement from Mr. Browder that he was not invited to appear in these hearings. I have not invited him, nor anybody else. I am not attempting to bind the committee, but I do state my individual views to the effect that I do not care a rap what Earl Browder or the whole Communist Party thinks about this legislation or any other legislation pending before Congress. I am the servant of this subcommittee, however, having been appointed as its chairman. If the subcommittee wants to hear this gentleman, of course, he will be heard. What is the desire of the subcommittee?

Senator WILEY. I move that we hear him.

Senator NEELY. I second that motion.

Senator VAN NUYS. It is moved and seconded that the gentleman referred to be heard. I hear no objection.

(Mr. Patrick Toohey and Mr. Benjamin J. Davis approached the witness stand.)

Senator VAN NUYS. Which one of you wishes to be heard first?

Mr. TOOHEY. We have agreed that Mr. Davis may make the statement.

Senator VAN NUYS. Very well.

Senator CONNALLY. May I ask him a question or two on voir dire?

Senator VAN NUYS. Yes.

Senator CONNALLY. You are delegating your authority to your friend here, are you?

Mr. TOOHEY. We have agreed that he may present the testimony. Either of us will testify, as the committee may desire.

Senator VAN NUYS. It is entirely up to you. It makes no difference to the committee.

Senator CONNALLY. Are you here representing the Communist Party of the United States?

Mr. TOOHEY. Yes, sir.

Senator CONNALLY. You and your associate?

Mr. TOOHEY. That is correct. We have been delegated by the national committee of the Communist Party to present a statement to this committee on this bill.

STATEMENT OF BENJAMIN J. DAVIS, JR., NEW YORK CITY

Senator VAN NUYS. State your name.

Mr. DAVIS. Benjamin J. Davis, Jr.

Senator VAN NUYS. Where do you live?

Mr. DAVIS. New York City.

Senator VAN NUYS. What is your occupation?

Mr. DAVIS. I am one of the members of the editorial board of the Daily Worker.

Senator VAN NUYS. What do you have to do with the printed material which appears in the Daily Worker?

Mr. DAVIS. It is published by a corporation.

Senator VAN NUYS. Are you a Communist?

Mr. DAVIS. Yes.

Senator VAN NUYS. How long have you been a member of the Communist Party?

Mr. DAVIS. I would like to say that I do not agree with this line of questioning.

Senator VAN NUYS. You have taken the stand, and the chairman of the committee will qualify you as a witness.

Mr. DAVIS. I would like to know what this has to do with my testimony on this bill.

Senator VAN NUYS. I have here a newspaper clipping which states that I am trying to pigeonhole this legislation.

Mr. DAVIS. I know nothing about that.

Senator VAN NUYS. What is this paper known as the Peoples Worker?

Mr. DAVIS. So far as I know, it is printed on the west coast.

Senator VAN NUYS. It came to me from New York.

Mr. DAVIS. Suppose you look and see where it is printed.

Senator VAN NUYS. Yes; San Francisco. Is that a Communist paper?

Mr. DAVIS. I don't know.

Senator VAN NUYS. What is your capacity with the Daily Worker?

Mr. DAVIS. I am a member of the editorial board of the Daily Worker.

Senator VAN NUYS. What was your occupation before you went into that business.

Mr. DAVIS. I want to say that I am answering these questions under protest.

Senator VAN NUYS. You may answer them under anything you like. What was your occupation before you went with the Daily Worker?

Mr. DAVIS. I was a lawyer.

Senator VAN NUYS. In New York City?

Mr. DAVIS. No; Atlantic City.

Senator VAN NUYS. All right. Go ahead.

Mr. DAVIS. I want to read a statement prepared in behalf of the Communist Party.

The Communist Party of the United States supports S. 845 (Wagner-Capper-Van Nuys antilynching bill). We urge its immediate enactment into law.

It is the plain duty of the United States Senate to enact as a law this bill which claims to "assure persons of every State due process of law and equal protection of the laws, and to end the crime of lynching."

It is the plain duty of the Senate Judiciary Committee to put an end to the reactionary efforts being made to emasculate and stifle this bill to immediately favorably report it to the Senate.

The continued barbarism of lynching remains a disgraceful blot upon the whole American democracy. Lynching is the most brutal expression of the whole system of Jim Crowism, discrimination, segregation, and persecution which has been imposed upon 15,000,000 Americans.

While lynching and Jim Crowism especially persecutes and denies American right to the Negro people, they are not its only victims because the lynch mob attacks and weakens the democratic and constitutional rights of all Americans. It is a threat to and an instrument against the whole labor and progressive movement of the country.

Can anyone deny that 15,000,000 Americans are cynically denied "due process of law and equal protection of the laws"; that their constitutional rights are disregarded and denied that they are subject to a most horrible peonage and denial of human rights; and they are victims of a continued brutal lynch rule of terrorist landlords and sweat-shop employers?

In approximately 12 Southern States and in many communities throughout the country, the Negro people are systematically denied and deprived of the right to vote, to serve on juries, to run for public office. They are the victims of the most vile and inhuman discrimination practiced by both public and private officials.

The notorious Cunningham plantation in Oglethorpe County, Ga., is an example of the peonage which holds the Negro people in a semislave condition and which crushes the white sharecropper as well. The Federal Bureau of Investigation and the Department of Justice, obligated to uphold the Constitution, consistently fail to bring to justice the lynchers of the Negro people, although it is most zealous in persecution of Communists and trade-unionists, and others who fight for peace, civil liberties, and democracy.

An action on February 9, 1940, by the Mississippi State Senate epitomizes the whole system of discrimination, Jim Crowism and denial of American rights to the Negro people. According to the Associated Press we learn:

> The senate yesterday passed a bill, 37 to 9 (a rewritten version of one passed by the house) providing free textbooks in the first eight grades, but adopted an amendment which its education committee said would eliminate from the civics text for Negroes instruction in such principles as voting. The senate also voted to keep free textbooks for Negroes in separate warehouses.

Senator H. L. Davis, of Oxford, Miss., a planter, gave the southern lynchers' position in defense of this monstrous measure when he said:

> Under the Constitution the Negro is a citizen, and, of course, we know and accept that. But he can never expect to be given the same educational and social privileges with the white man and he doesn't expect them. The best education we can give him is to use his hands, because that's how he must earn his living. It always has and it always will be.

Senator Davis is a liar and a charlatan.

Senator NEELY. In your statement with reference to Senator Davis, does that mean Senator Davis, of Pennsylvania?

Mr. DAVIS. No, sir. That is H. L. Davis, a State senator in Mississippi.

The Negro people for years, together with white progressives, have fought militantly for full American rights. The southern reactionaries, using the Ku Klux Klan, have launched a renewed and increased terrorist campaign against the Negro people who seek to obtain and exercise their constitutional rights. The southern landlords and mill owners, who are but the stooges of Wall Street monopoly capitalists, are using the Ku Klux Klan and other terrorists as spies and provocateurs to attempt to maintain their system of Jim Crowism and lynch rule, to disperse the growing progressive movement of Negro and white Americans, to break up the trade-union movement by directing its main attack against the C. I. O. trade-unions.

All of the attacks against the Negro people, against the trade-unions and the poor white masses of the South, come from the same

landlord-mill owner forces who use lynching as an instrument to brutalize the Negro people, to divide the exploited white and Negro people, to weaken the labor movement, to limit and restrict the civil rights of the American people as a whole.

That lynch terror strikes against the labor movement may be seen in the fact that among the five "reported" lynchings of last year, two were white workingmen. Of the 5,000 persons lynched in the United States since 1886 fully a fourth of them have been white people.

Enemies of the antilynching bill argue that the problem is lessening year by year and that no Federal action is required. Although there were but 5 reported lynchings last year, reliable statistics indicate that in the State of Mississippi alone there were 20 unreported lynchings. The lynchers have adopted a technique of spiriting away their victims quietly and carrying on their monstrous work without crowds or publicity.

The Communist Party, which has long and tirelessly fought for Negro rights, declares that the enactment of this bill is an essential to help end these barbarous conditions; to help make effective and give some meaning to the thirteenth, fourteenth, and fifteenth amendments to the Constitution. These were enacted to guarantee the full citizenship of the Negro people, but have been systematically undermined by the lynchers and Jim Crowers. The antilynching bill is necessary to protect the civil rights of all Americans—Negroes and white, which are under serious attack at present under cover of the war hysteria. Violations of the civil and democratic rights of the Negro people are increasing at an alarming rate. A survey taken by the International Labor Defense shows 7 violations occurred in September, 18 in October, 14 in November 1939.

The passage of this bill will not only be an historic step toward achievement of a full citizenship and of democratic rights for the Negro people, but it will also deal a blow to the Wall Street landlord system which impoverishes Negro and white people in the South, that system which restricts and undermines the civil and political rights of all Americans.

An overwhelming majority of American people has demonstrated support for this measure. In addition to the National Association for the Advancement of Colored People, which sponsors this bill, it is endorsed by the National Negro Congress, by the Congress of Industrial Organizations, by the American Federation of Labor, and by many hundreds of church, civic, social, youth, and women groups in every part of the Nation.

The shameful tactics of Senator Connally——

Senator CONNALLY. Mr. Chairman, I do not propose to be abused by this witness or by anybody else.

Senator WILEY. It seems to me the witness is hurting his own cause. I feel that he can proceed by giving us information without dealing in personalities.

Senator VAN NUYS. The hearings have been so conducted up to this time, and will continue to be so conducted. No reference will be permitted to Members of Congress except in a respectful manner.

Mr. DAVIS. Senator Connally has not been very respectful in referring to Negro people.

Senator VAN NUYS. You may as well understand now that we will permit no such remarks about any Member of the Senate.

Mr. DAVIS. They are no more personal than the slanders that have been uttered against the Negro people.

Senator VAN NUYS. You heard what I said. Now, proceed.

The rules of the Senate do not permit even a Senator to make such aspersions against fellow Members, and certainly you will not be permitted to do so. Proceed.

Mr. DAVIS. I withdraw that statement under protest.

Senator VAN NUYS. All right. Go ahead.

Mr. DAVIS. Their argument that this will invade "States' rights" or is otherwise unconstitutional are but subterfuges of reactionary Democratic and Republican demagogues who strive and conspire to block its passage. They are trying to emasculate it. Their reactionary arguments have been repudiated by the American people who have demonstrated that they want this bill written into the laws of the country. The growth of the labor movement and of liberal sentiment organization among southern white people, the denunciation of lynching made by southern women, and the growing movement in the South against the whole brutal system of lynch terror, is the living repudiation of the slanders which the filibusterers have uttered against this bill.

Democratic reactionaries and Republican hypocrites alike are trying to destroy and smother this bill because they know it will promote democracy and civil rights not alone for the Negro people but for the entire South and the Nation.

Senator AUSTIN. I want to interrupt the witness. Are you referring to Representatives and Senators? I want to know whether that characterization is intended to apply to men who are trying to perform their duties as Members of Congress.

Mr. DAVIS. That is addressed to all those who have done everything possible to smother that bill and prevent its passing the Senate.

Senator AUSTIN. Just a minute. This is not responsive to my question. Are you referring to Representatives and Senators?

Mr. DAVIS. I am referring to those Representatives and Senators who endeavored to smother this bill.

Senator AUSTIN. That is as far as I want to go with you. I have been for this bill, I have been for this principle, but I will not allow any witness to sit here and reflect upon the honor and integrity of Senators and Representatives who hold views that are contrary to mine. If you can continue without that kind of argument and statements, I am willing to hear you; but otherwise I am not. Do you understand?

Mr. DAVIS. You seem to be trying to browbeat me and keep me from testifying.

Senator AUSTIN. That is just in line with your previous testimony. Nobody is attempting to browbeat you in any way. If you have any testimony you want to give, any fact, any conclusions or opinions, you will have a full opportunity to give it; but you will not be allowed to come here and charge Senators and Representatives with bad faith in their attitude toward this or any other legislation. That is not only against the rules of the Senate and House, but it is against

the tenets of honor and decency. I hope the Communist Party of the United States is not being represented by you when you do that.

Mr. DAVIS. I would like to say, Senator Austin, that I would like to hear you make a similar speech on the rights of Negroes and the labor movement in this country.

Senator VAN NUYS. That part of your remarks, as well as the references to filibusterers and mill owners, will be expunged from the record.

Mr. DAVIS. Under protest.

Senator VAN NUYS. All right; under protest.

Senator WILEY. It occurs to me that this situation presents something for us to think about. I am wondering if it is in line with Communist philosophy to talk that way before all groups in authority.

Mr. DAVIS. Is that put to me as a question?

Senator WILEY. I am reflecting out loud.

Mr. DAVIS. I would like to reflect out loud. It seems to me we are getting away from the subject about which I was supposed to testify before this committee, and that was the antilynching bill, and we are getting into a lot of things that are not germane to the question.

Senator VAN NUYS. Go ahead with your statement.

Mr. DAVIS. More than enough votes are pledged to pass this bill in the Senate but the reactionaries are willfully and maliciously delaying its coming to the floor for a vote. President Roosevelt's "national unity" is expressed in his reported agreement with the "evil old labor baiter," Vice President Garner, to scuttle this measure. These dilatory and sabotaging practices are a contemptuous flaunting of the will of the people. It serves as a protection of and encouragement to the lynchers, who, with friends in high places, continue brazenly to violate the Bill of Rights and the thirteenth, fourteenth, and fifteenth amendments to the Constitution. It is necessary to protest this outrageous practice of the Democratic and Republican leadership which for the last 22 years in Congress has served to defeat the will of the people.

Senator AUSTIN. I think this witness should be required to leave the room, if he is going to persist in this way.

Senator CONNALLY. I protest against this and ask that it be expunged from the record.

Mr. DAVIS. I wish to protest against the attitude of this committee as not being in accordance with the practices of free speech.

Senator AUSTIN. Do you consider freedom or free speech a right to insult those who may differ from you?

Mr. DAVIS. I think the right of free speech permits me to express my own personal opinion.

Senator AUSTIN. That is, you consider that the right of free speech permits you to provoke resentment and even a breach of peace?

Mr. DAVIS. Of course, we don't say that. We can't accept that. We do not believe that free speech permits people to carry out their own personal prejudices. Arguments are being made and have been made in the Senate by various Senators which are derogatory to the name and reputation of the Negro people, but no Senator stood upon the floor and upheld the democratic traditions upon which this country was founded.

Senator AUSTIN. Apparently, what you regard as freedom of speech is license to say anything you please, anywhere, under any circumstances. Is that right?

Mr. DAVIS. I mean by free speech the right guaranteed to citizens under the Constitution and the Bill of Rights.

Senator AUSTIN. And you think you are within the limits of decency in the use of that right in your presentation here?

Mr. DAVIS. I think I am speaking the truth about this bill and the conditions surrounding it, and that is what I am here for.

Senator AUSTIN. I want to ask you one more question.

Mr. DAVIS. May I finish this statement? There are only a few more paragraphs.

Senator AUSTIN. I want to get an answer to this question. I want to know if you are really trying to promote the passage of this legislation, or whether you are here in opposition to it.

Mr. DAVIS. I am here to give expression to the views of my party, that are symbolic of the wishes of millions of American citizens, that this bill be written into law.

Millions of Americans are in actual need and distress, due to the fact that since 1932 they have been trying to secure the enactment of this sort of legislation.

Senator VAN NUYS. Proceed.

Mr. DAVIS. The Communist Party, which of all the political parties is the uncompromising and outstanding fighter for the complete liberation of the Negro people, and in complete accord with the traditions of Lincoln and Jefferson, urges the immediate passage of this bill by the Senate.

We consider, however, that the passage of this bill is not alone sufficient to stamp out the evil of lynching and the whole system of oppression which lynching symbolizes. It still is a comparatively weak measure. Unfortunately, that section which expressly prevents its use against workers on strike or on picket lines was deleted when it passed the House on January 7. But even as it is, and on condition that additional reactionary amendments are not tacked on, this bill as it is can serve as a deterrent against lynchers and their mobs; and it can serve to stimulate the whole fight for the complete liberation of the Negro people and for democracy.

We urge you to bring this bill immediately to the Senate floor for a vote, with a recommendation that it be made law. It is not too much to ask, to enforce the constitutional rights of Negro Americans, to safeguard the Bill of Rights and civil liberties of all Americans.

Senator WILEY. I was interested in one statement where you said the Communist Party stood for the principles of Washington and Lincoln. Does the Communist Party stand for the same principles that Stalin stands for?

Mr. DAVIS. The Communist Party stands for the principles of free speech and free citizenship for the Negro people in this country.

Senator WILEY. Do you think that is an answer to my question?

Mr. DAVIS. I think your question is not germane to this discussion.

Senator WILEY. Mr. Chairman, I ask that the witness be compelled to answer that question or leave the stand.

Senator VAN NUYS. Do you understand the question?

Mr. DAVIS. I think so.

Senator VAN NUYS. Mr. Reporter, read the question.

(The question was thereupon read by the reporter, as follows:)

I was interested in one statement where you said the Communist Party stands for the principles of Washington and Lincoln. Does the Communist Party stand for the same principles that Stalin stands for?

Senator VAN NUYS. Answer that question.

Mr. DAVIS. The Communist Party in America stands for the principles of American democracy. Stalin is obviously a Russian, and not an American, and therefore I am sure that he could not be placed in the same position as the Communist Party with reference to this law.

Senator WILEY. Then you want to answer that question, No, do you?

Mr. DAVIS. No; I do not want to answer it No.

Senator WILEY. Do you want to answer it categorically, Yes?

Mr. DAVIS. No. I don't want to answer it categorically either way. It is impossible to do it and give a true statement of the whole situation.

Senator WILEY. Then you want to make a middle-ground answer—yes and no?

Mr. DAVIS. No; I want to say that it cannot be answered by saying yes or no.

Senator WILEY. Does Stalin stand for freedom of speech and freedom of the press?

Mr. DAVIS. Senator, I am familiar with the Communist press in America, and not the Russian press.

Senator WILEY. But you are interested in making a favorable impression upon the Black Belt in America.

Do you still make the statement that you stand for the same principles that Lincoln and Washington stood for?

Mr. DAVIS. Yes; I said Lincoln and Jefferson.

Senator WILEY. You accept Lincoln and Jefferson and exclude Washington?

Mr. DAVIS. Certainly not.

Senator WILEY. Some reference has been made, I think, to the American constitution of the Communist Party. Is it permissible that you have a separate constitution and local laws or bylaws of the Communist Party in this country, from those in Russia, of the Russian Communist Party?

Mr. DAVIS. The bylaws of the Communist Party of America are made up by party members in America.

Senator WILEY. Do you have a copy of the constitution with you?

Mr. DAVIS. No, sir.

Senator WILEY. Has your associate one?

Mr. DAVIS. You can ask him.

Senator WILEY. I am asking you.

Mr. DAVIS. He is right there.

Senator WILEY. Do you know?

Mr. DAVIS. I told you I don't know.

Senator WILEY. Then answer this question: Do you know the basic principles of your party?

Mr. DAVIS. I think I do.

Senator WILEY. Would you mind telling us succinctly what those basic principles are in relation to the ownership of property? Do you believe in private ownership of property?

Mr. DAVIS. For the workers of America, as well as other Americans, I am convinced that socialism is the only way in which they may get equitable and fair treatment consistent with the principles of the American people.

Senator WILEY. I did not ask you about that. I think you said something to the effect that you do not believe in private ownership of property.

Mr. DAVIS. We believe that private ownership of property, as it is under capitalism, is one of the basic causes of the exploitation, suffering, and lynching of Negro people. I wish to say that you are asking me a number of things which have no relation to the antilynching bill.

Senator WILEY. The committee will be the judge of that. Unless the chairman corrects me, I will determine the questions I shall ask. You are here before this committee as a witness. Apparently, as Senator Austin brought out very clearly, you do not appreciate the privilege you are enjoying.

That is all I care to ask this witness.

Senator VAN NUYS. The testimony has developed just what I thought would happen. In the testimony you have given in the hearing on this bill you have done more harm than good.

You may be excused.

STATEMENT OF PATRICK TOOHEY, STATE SECRETARY, COMMUNIST PARTY OF PENNSYLVANIA

Senator VAN NUYS. Mr. Toohey, do you want to testify?

Mr. TOOHEY. I am willing to adopt the remarks of Mr. Davis.

Senator CONNALLY. I should like to ask him a question or two.

Senator VAN NUYS. Very well.

Senator CONNALLY. What position do you occupy in the Communist Party?

Mr. TOOHEY. I am State Secretary of the Communist Party of Pennsylvania.

Senator CONNALLY. You are on the national committee of the national organization, are you not?

Mr. TOOHEY. Yes.

Senator CONNALLY. You wrote a letter to several Senators, did you not?

Mr. TOOHEY. Yes.

Senator CONNALLY. Which they got this morning?

Mr. TOOHEY. Yes.

Senator CONNALLY. Did your national committee have a formal meeting and pass a resolution endorsing this bill?

Mr. TOOHEY. It did.

Senator CONNALLY. Have you got that resolution and action of the committee with you?

Mr. TOOHEY. Unfortunately, no; it was on February 17 and 18.

Senator CONNALLY. Will you send a copy of it to me?

Mr. TOOHEY. I will be very happy to do so.

Senator CONNALLY. The national committee of the Communist Party formally passed a resolution approving and urging the enactment of this bill.

Mr. TOOHEY. That is quite correct.

Senator CONNALLY. Are you also against gang murders?

Mr. TOOHEY. Yes, sir.

Senator CONNALLY. Would you favor incorporating in this bill a provision making it effective against gang murders, murders of laboring men, and others?

Mr. TOOHEY. I would not.

Senator CONNALLY. You do not want this bill to cover that?

Mr. TOOHEY. For the reason that gang murders and murders of laboring men are prosecuted in the courts, and we already have laws to cover that, and don't need any additional laws for that purpose, whereas there is no law that is applied to lynching.

Senator CONNALLY. We already have laws against murder?

Mr. TOOHEY. Yes, sir.

Senator CONNALLY. Would you say that lynching is murder, just like any other murder?

Mr. TOOHEY. That is true.

Senator CONNALLY. What difference does it make if a man is murdered in New York City, if five white men come along and kill another white man? Why is not that just as much of a crime and problem as this proposed law, covering a situation where perhaps 15 men, or perhaps only 3 men, are charged with murdering a man? What is the difference?

Mr. TOOHEY. It seems to me that it is very plain, so far as lynching is concerned, the necessity of having some means to guarantee and force the constitutional rights of the Negro people, which have been violated in the most brutal manner.

Senator CONNALLY. You are from Pennsylvania?

Mr. TOOHEY. Yes, sir.

Senator CONNALLY. A great many people are killed in Pennsylvania.

Mr. TOOHEY. A good many laboring men.

Senator CONNALLY. Do you not believe the laboring men should be protected from gang murders in Pennsylvania, the same as the colored people in the South should be protected from lynching?

Mr. TOOHEY. That is true; but that is not done to the extent of the lynching in the South.

Senator CONNALLY. You say that there are not as many murders of laboring men as there are lynchings of Negroes in the South?

Mr. TOOHEY. I say that the problem of lynching in Pennsylvania is not a problem.

Senator CONNALLY. If a white man is lynched or hung or murdered in any northern State, you do not think that is as serious as the lynchings in the South? Well, that is all I want to ask.

Senator VAN NUYS. I have here what purports to be the constitution and bylaws of the Communist Party of the United States of America. Are you familiar with that?

Mr. TOOHEY. I am.

Senator VAN NUYS. Is that a correct copy of the constitution and bylaws of the Communist Party of the United States of America?

Mr. TOOHEY. That is true.

Senator VAN NUYS. What connection does the Communist Party of America have with the Communist Party of Russia?

Mr. TOOHEY. There is no legal connection between the Communist Party of the United States and the Communist Party of the Soviet Union.

Senator VAN NUYS. No logical connection?

Mr. TOOHEY. No.

Senator VAN NUYS. What does this mean on page 21 of the constitution and bylaws of the Communist Party of the United States of America, article 11:

The Communist Party of the United States of America is affiliated with its fraternal Communist parties of other lands through the Communist International, and participates in international congresses through its national committee. Resolutions and decisions of international congresses shall be considered and acted upon by the supreme authority of the Communist Party of the United States of America, the national convention, or between conventions, by the national committee.

Mr. TOOHEY. Will you let me see that?

Senator VAN NUYS. Yes [handing document to witness]. I thought you said you knew it.

Mr. TOOHEY. I do. Yes; that is correct.

Senator VAN NUYS. That is true, is it?

Mr. TOOHEY. That is true.

Senator VAN NUYS. You have not just learned this morning that there is in existence such a constitution and bylaws?

Mr. TOOHEY. I have not. I want to affirm the correctness of that statement, the one you just read.

Senator VAN NUYS. It is correct?

Mr. TOOHEY. That has been correct for 23 years.

Senator VAN NUYS. I ask that this copy of the constitution and bylaws of the Communist Party of the United States of America be marked "Exhibit A" and made a part of this record.

(The document referred to, having been marked "Exhibit A," is here set forth in full, as follows:)

EXHIBIT A

THE CONSTITUTION AND BYLAWS OF THE COMMUNIST PARTY OF THE UNITED STATES OF AMERICA

This constitution was unanimously adopted by the Tenth National Convention of the Communist Party of the U. S. A., in New York, May 27 to 31, 1938, after two months of pre-Convention discussion in every Branch of the Party. In its final form it was subsequently ratified by the Party membership after discussion in the Branches of the Party.

[Published by Workers Library Publishers, Inc., P. O. Box 148, Station D, New York, N. Y., August 1938. First Printing, August 1938; Second Printing, September 1938]

CONSTITUTION

Preamble

The COMMUNIST PARTY of the United States of America is a working class political party carrying forward today the traditions of Jefferson, Paine, Jackson, and Lincoln, and of the Declaration of Independence; it upholds the achievements of democracy, the right of "life, liberty, and the pursuit of happiness," and defends the United States Constitution against its reactionary enemies who would destroy democracy and all popular liberties; it is devoted to defense of the immediate interests of workers, farmers, and all toilers against capitalist exploitation, and to preparation of the working class for its historic mission to unite and lead the American people to extend these democratic principles to their necessary and logical conclusions.

By establishing common ownership of the national economy, through a government of the people, by the people, and for the people; the abolition of all exploitation of man by man, nation by nation, and race by race, and thereby the

abolition of class divisions in society; that is, by the establishment of socialism according to the scientific principles enunciated by the greatest teachers of mankind, Marx, Engels, Lenin, and Stalin, embodied in the Communist International; and the free cooperation of the American people with those of other lands, striving toward a world without oppression and war, a world brotherhood of man.

To this end the Communist Party of the United States of America establishes the basic laws of its organization in the following Constitution.

ARTICLE I. NAME

The name of this organization shall be the COMMUNIST PARTY OF THE UNITED STATES OF AMERICA.

ARTICLE II. EMBLEM

The emblem of the Party shall be the crossed hammer and sickle, representing the unity of worker and farmer, with a circular inscription having at the top "Communist Party of the U. S. A." and in the lower part "Affiliated to the Communist International."

ARTICLE III. MEMBERSHIP

SECTION 1. Any person, eighteen years of age or more, regardless of race, sex, color, religious belief, or nationality, who is a citizen or who declares his intention of becoming a citizen of the United States, and whose loyalty to the working class is unquestioned, shall be eligible for membership.

SEC. 2. A Party member is one who accepts the Party program, attends the regular meetings of the membership Branch of his place of work or of his territory or trade, who pays dues regularly and is active in Party work.

SEC. 3. An applicant for membership shall sign an application card which shall be endorsed by at least two members of the Communist Party. Applications are subject to discussion and decision by the basic organization of the Party (shop, industrial, neighborhood Branch) to which the application is presented. After the applicant is accepted by a majority vote of the membership Branch present at a regular meeting he shall publicly pledge as follows:

"I pledge firm loyalty to the best interests of the working class and full devotion to all progressive movements of the people. I pledge to work actively for the preservation and extension of democracy and peace, for the defeat of fascism and all forms of national oppression, for equal rights to the Negro people and for the establishment of socialism. For this purpose, I solemnly pledge to remain true to the principles of the Communist Party, to maintain its unity of purpose and action, and to work to the best of my ability to fulfil its program."

SEC. 4. There shall be no members-at-large without special permission of the National or State Committee.

SEC. 5. Party members two months in arrears in payment of dues cease to be members of the Party in good standing, and must be informed thereof.

SEC. 6. Members who are four months in arrears shall be stricken from the Party rolls. Every member three months in arrears shall be officially informed of this provision, and a personal effort shall

be made to bring such member into good standing. However, if a member who for these reasons has been stricken from the rolls applies for readmission within six months, he may, on the approval of the next higher Party committee, be permitted to pay up his back dues and keep his standing as an old member.

ARTICLE IV. INITIATION AND DUES

SECTION 1. The initiation fee for an employed person shall be 50 cents and for an unemployed person 10 cents.

SEC. 2. Dues shall be paid every month according to rates fixed by the National Party Convention.

SEC. 3. The income from dues shall be distributed to the various Party organizations as follows:

(*a*) 25 percent to the Branch.

(*b*) 35 percent to the National Office.

(*c*) The remaining 40 percent shall be distributed among the respective State, County, City, and Section Organizations in accordance with decisions of the State Conventions.

SEC. 4. Fifty percent of the initiation fee shall be sent to the National Committee and 50 percent shall remain with the State Organization.

ARTICLE V. INTERNATIONAL SOLIDARITY AND ASSESSMENT

SECTION 1. Every four months, all members of the Party shall pay an assessment equal to the average dues payment per month for the previous four months, for an International Solidarity Fund. This money shall be used by the National Committee exclusively to aid our brother Communist Parties in other countries suffering from fascist and military reaction.

SEC. 2. All local or district assessments are prohibited, except by special permission of the National Committee. Special assessments may be levied by the National Convention or the National Committee. No member shall be considered in good standing unless he purchases stamps for such special assessments.

ARTICLE VI. RIGHTS AND DUTIES OF MEMBERS

SECTION 1. The Communist Party of the U. S. A. upholds the democratic achievements of the American people. It opposes with all its power any clique, group, circle, faction, or party which conspires or acts to subvert, undermine, weaken, or overthrow any or all institutions of American democracy whereby the majority of the American people have obtained power to determine their own destiny in any degree. The Communist Party of the U. S. A., standing unqualifiedly for the right of the majority to direct the destinies of our country, will fight with all its strength against any and every effort, whether it comes from abroad or from within, to impose upon our people the arbitrary will of any selfish minority group or party or clique or conspiracy.

SEC. 2. Every member of the Party who is in good standing has not only the right, but the duty, to participate in the making of the policies of the Party and in the election of its leading committees, in a manner provided for in the Constitution.

SEC. 3. In matters of state or local nature, the Party organizations have the right to exercise full initiative and to make decisions within the limits of the general policies and decisions of the Party.

SEC. 4. After thorough discussion, the majority vote decides the policy of the Party, and the minority is duty-bound to carry out the decision.

SEC. 5. Party members disagreeing with any decision of a Party organization or committee have the right to appeal that decision to the next higher body, and may carry the appeal to the highest bodies of the Communist Party of the U. S. A., its National Committee and the National Convention. Decisions of the National Convention are final. While the appeal is pending, the decision must nevertheless be carried out by every member of the Party.

SEC. 6. In pre-Convention periods, individual Party members and delegates to the Convention shall have unrestricted right of discussion on any question of Party policy and tactics and the work and future composition of the leading committees.

SEC. 7. The decisions of the Convention shall be final and every Party member and Party organization shall be duty-bound to recognize the authority of the Convention decisions and the leadership elected by it.

SEC. 8. All Party members in mass organizations (trade unions, farm and fraternal organizations, etc.), shall cooperate to promote and strengthen the given organization and shall abide by the democratic decisions of these organizations.

SEC. 9. It shall be the duty of Party members to explain the mass policies of the Party and the principles of socialism.

SEC. 10. All Party members who are eligible shall be required to belong to their respective trade unions.

SEC. 11. All officers and leading committees of the Party from the Branch Executive Committee up to the highest committees are elected either directly by the membership or through their elected delegates. Every committee must report regularly on its activities to its Party organization.

SEC. 12. Any Party officer may be removed at any time from his position by a majority vote of the body which elected him, or by the body to which he is responsible, with the approval of the National Committee.

SEC. 13. Requests for release of a Party member from responsible posts may be granted only by the Party organization which elected him, or to which he is responsible, in consultation with the next higher committee.

SEC. 14. No Party member shall have personal or political relationship with confirmed Trotskyites, Lovestoneites, or other known enemies of the Party and of the working class.

SEC. 15. All Party members eligible shall register and vote in the elections for all public officers.

ARTICLE VII. STRUCTURE OF THE PARTY

SECTION 1. The basic organizations of the Communist Party of the U. S. A. are the shop, industrial, and territorial Branches.

The Executive Committee of the Branch shall be elected once a year by the membership.

SEC. 2. The Section Organization shall comprise all Branches in a given territory of the city or state. The Section territory shall be defined by the higher Party committee and shall cover one or more complete political divisions of the city or state.

The highest body of the Section Organization is the Section Convention, or special annual Council meeting, called for the election of officers, which shall convene every year. The Section Convention or special Council meeting discusses and decides on policy and elects delegates to the higher Convention.

Between Section Conventions, the highest Party body in the Section Organization is the Section Council, composed of delegates elected proportionately from each Branch for a period of one year. Where no Section Council exists, the highest Party body is the Section Committee, elected by a majority vote of the Section Convention, which also elects the Section Organizer.

The Section Council or Section Committee may elect a Section Executive Committee which is responsible to the body that elected it. Nonmembers of the Section Council may be elected to the Executive Committee only with the approval of the next higher committee.

SEC. 3. In localities where there is more than one Section Organization, a City or County Council or Committee may be formed in accordance with the By-Laws.

SEC. 4. The State Organization shall comprise all Party organizations in one state.

The highest body of the State Organization is the State Convention, which shall convene every two years, and shall be composed of delegates elected by the Conventions of the subdivisions of the Party or Branches in the state. The delegates are elected on the basis of numerical strength.

A State Committee of regular and alternate members shall be elected at the State Convention with full power to carry out the decisions of the Convention and conduct the activities of the State Organization until the next State Convention.

The State Committee may elect from among its members and Executive Committee, which shall be responsible to the State Committee.

Special State Conventions may be called either by a majority vote of the State Committee, or upon written request of the Branches representing one-third of the membership of the state, with the approval of the National Committee.

SEC. 5. District Organizations may be established by the National Committee, covering two or more states. In such cases the State Committees shall be under the jurisdiction of the District Committees, elected by and representing the Party organizations of the states composing these Districts. The rules of convening District Conventions and the election of leading committees shall be the same as those provided for the State Organization.

ARTICLE VIII. NATIONAL ORGANIZATION

SECTION 1. The supreme authority of the Communist Party of the U. S. A. is the National Convention. Regular National Conventions shall be held every two years. Only such a National Convention is authorized to make political and organizational decisions binding

upon the entire Party and its membership, except as provided in Article VIII, Section 6.

SEC. 2. The National Convention shall be composed of delegates elected by the State and District Conventions. The delegates are elected on the basis of numerical strength of the State Organizations. The basis for representation shall be determined by the National Committee.

SEC. 3. For two months prior to the Convention, discussions shall take place in all Party organizations on the main resolutions and problems coming before the Convention. During this discussion all Party organizations have the right and duty to adopt resolutions and amendments to the Draft Resolutions of the National Committee for consideration at the Convention.

SEC. 4. The National Convention elects the National Committee, a National Chairman, and General Secretary by majority vote. The National Committee shall be composed of regular and alternate members. The alternate members shall have voice but no vote.

SEC. 5. The size of the National Committee shall be decided upon by each National Convention of the Party. Members of the National Committee must have been active members of the Party for at least three years.

SEC. 6. The National Committee is the highest authority of the Party between National Conventions, and is responsible for enforcing the Constitution and securing the execution of the general policies adopted by the democratically elected delegates in the National Convention assembled. The National Committee represents the Party as a whole, and has the right to make decisions with full authority on any problem facing the Party between Conventions. The National Committee organizes and supervises its various departments and committees; conducts all the political and organizational work of the Party; appoints or removes the editors of its press, who work under its leadership and control; organizes and guides all undertakings of importance for the entire Party; distributes the Party forces and controls the central treasury. The National Committee, by majority vote of its members, may call special State or National Conventions. The National Committee shall submit a certified, audited financial report to each National Convention.

SEC. 7. The National Committee elects from among its members a Political Committee and such additional secretaries and such departments and committees as may be considered necessary for most efficient work. The Political Committee is charged with the responsibility of carrying out the decisions and the work of the National Committee between its full sessions. It is responsible for all its decisions to the National Committee. The size of the Political Committee shall be decided upon by majority vote of the National Committee.

Members of the Political Committee and editors of the central Party organs must have been active members of the Party for not less than five years.

The National Committee shall meet at least once in four months.

The Political Committee of the National Committee shall meet weekly.

The National Committee may, when it deems it necessary, call Party Conferences. The National Committee shall decide the basis of attendance at such Conferences. Such Conferences shall be consultative bodies auxiliary to the National Committee.

ARTICLE IX. NATIONAL CONTROL COMMUNISM

SECTION 1. For the purpose of maintaining and strengthening Party unity and discipline, and of supervising the audits of the financial books and records of the National Committee of the Party and its enterprises, the National Committee elects a National Control Commission, consisting of the most exemplary Party members, each of whom shall have been an active Party members for at least five years. The size of the National Control Commission shall be determined by the National Committee.

SEC. 2. On various disciplinary cases, such as those concerning violations of Party unity, discipline, or ethics, or concerning lack of class vigilance and Communist firmness in facing the class enemy, or concerning spies, swindlers, double-dealers, and other agents of the class enemy—the National Control Commission shall be charged with making investigations and decisions, either on appeals against the decisions of lower Party bodies, or on cases which are referred to it by the National Committee, or on cases which the National Control Commission itself deems necessary to take up directly.

SEC. 3. The decisions of the National Control Commission shall go into effect as soon as their acceptance by the National Committee or its Political Committee is assured.

SEC. 4. Members of the National Control Commission shall have the right to participate in the sessions of the National Committee with voice but no vote.

SEC. 5. Meetings of the National Control Commission shall take place at least once every month.

ARTICLE X. DISCIPLINARY PROCEDURE

SEC. 1. Breaches of Party discipline by individual members, financial irregularities, as well as any conduct or action detrimental to the Party's prestige and influence among the working masses and harmful to the best interests of the Party, may be punished by censure, public censure, removal from responsible posts, and by expulsion from the Party. Breaches of discipline by Party Committees may be punished by removal of the Committee by the next higher Party Committee, which shall then conduct new elections.

SEC. 2. Charges against individual members may be made by any person—Party or non-Party—in writing, to the Branches of the Party or to any leading committee. The Party Branch shall have the right to decide on any disciplinary measure, including expulsion. Such action is subject to final approval by the State Committee.

SEC. 3. The Section, State, and National Committees and the National Control Commission have the right to hear and take disciplinary action against any individual member or organization under their jurisdiction.

SEC. 4. All parties concerned shall have the fullest right to appear, to bring witnesses and to testify before the Party organization. The member punished shall have the right to appeal any disciplinary decision to the higher committees up to the National Convention of the Party.

SEC. 5. Party members found to be strikebreakers, degenerates, habitual drunkards, betrayers of Party confidence, provocateurs, advocates of terrorism and violence as a method of Party procedure, or

members whose actions are detrimental to the Party and the working class, shall be summarily dismissed from positions of responsibility, expelled from the Party and exposed before the general public.

ARTICLE XI. AFFILIATION

The Communistic Party of the U. S. A. is affiliated with its fraternal Communist Parties of other lands through the Communist International and participates in International Congresses, through its National Committee. Resolutions and decisions of International Congresses shall be considered and acted upon by the supreme authority of the Communist Party of the U. S. A., the National Convention, or between Conventions, by the National Committee.

ARTICLE XII. AMENDING THE CONSTITUTION

SECTION 1. This Constitution and By-Laws may be amended as follows: (a) by decision of a majority of the voting delegates present at the National Convention, provided the proposed amendment has been published in the Party press or Discussion Bulletins of the National Committee at least thirty days prior to the Convention; (b) by the National Committee for the purpose of complying with any law of any state or of the United States or whenever any provisions of this Constitution and By-Laws conflict with any such law. Such amendments made by the National Committee shall be published in the Party press or Discussion Bulletins of the National Committee and shall remain in full force and effect until acted upon by the National Convention.

SEC. 2. Any amendment submitted by a State Committee or State Convention within the time provided for shall be printed in the Party press.

ARTICLE XIII. BYLAWS

SECTION 1. By-Laws shall be adopted, based on this Constitution, for the purpose of establishing uniform rules and procedure for the proper functioning of the Party organizations. By-Laws may be adopted or changed by majority vote of the National Convention or between Conventions by majority vote of the National Committee.

SEC. 2. State By-Laws not in conflict with the National Constitution and By-Laws may be adopted or changed by majority vote of the State Convention or, between Conventions, by majority vote of the State Committee.

ARTICLE XIV. CHARTERS

The National Committee shall issue Charters to State or District Organizations and at the request of the respective State Organizations, to County and City Organizations, defining the territory over which they have jurisdiction and authority.

RULES AND BYLAWS

The following are the Rules and Bylaws adopted by the Communist Party of the United States of America, in accordance with its Constitution, for the purpose of carrying out the principles, rights, and duties as established in the Constitution in a uniform manner in all Party organizations.

Basic Organizations

The basic organizations of the Communist Party of the U. S. A. are the shop, territorial, and industrial Branches. A shop Branch consists of those Party members who are employed in the same place of employment. Shop Branches shall be organized in every factory, shop, mine, ship, dock, office, etc., where there is a sufficient number of Party members, but no less than seven.

A territorial Branch consists of members of the Party living in the same neighborhood or territory. Territorial Branches shall be organized on the basis of the political division of the city or town (assemble district, ward, precinct, election district, town or township, etc.).

Industrial Branches may be organized and shall consist of Party members employed in the same trade or industry and shall be composed of those Party members who are employed in places where shop Branches have not yet been formed. Shop Branches shall be organized wherever possible.

Every Branch of the Party shall elect an Executive Committee, which shall consist of at least the following officers: Chairman, treasurer, educational director, membership director. There may be a recording secretary whose functions may be filled by one of the other officers. The size of the Executive Committee shall be determined by the size of the Branch, but shall not be less than four.

The Executive Committee has the duty of preparing the agenda and proposals for the membership meeting, administering and executing the decisions of the membership and the higher Party committee, and, between Branch meetings, of making decisions concerning matters which require immediate action. The Executive Committee of the Branch shall report regularly on its work, which shall be subject to review and action by the membership.

Regular election of Branch officers shall take place yearly, but not more than twice a year. All officers shall be elected by majority vote of the membership at a specially designated meeting of which the whole membership shall be notified. Officers may be replaced by majority vote of the Branch membership at any time, with the approval of the higher Party committee.

Financial statements shall be submitted to the Branch by the Executive Committee at least quarterly.

The order of business at the Branch meeting shall include the following:

1. Reading of minutes of previous meeting.
2. Dues payments and initiation of new members.
3. Reports of Executive Committee:

(*a*) Check-up on decisions (old business).

(*b*) Assignments and tasks, reports on communications, literature, and press (new business).

4. Good and welfare.
5. Regular educational discussion (educational discussion may be moved to any point on the order of business).

Collections within Party organizations in a given territory may be made only with the approval of the next higher body.

One-third of the Branch membership shall constitute a quorum.

Branches shall meet at least once every two weeks.

Section organizations

Delegates to the Section Convention or Council shall be elected by all Branches in proportion to their membership. The basis of representation shall be decided upon by the Sections Committee in consultation with the higher Party Committee.

Any delegate to the Section Council may be recalled by a majority vote of his Branch. The Section Council meets regularly once a month.

The Sections Council shall make a report at least once in three months to the general membership meeting of the Section. All Party members residing in the territory may be invited to these meetings.

The Section Council shall submit financial reports to the Branches and to the higher Party Committee at least once in three months.

City or county organizations

In cities where there is more than one Section Organization, a City Council may be formed by the election of delegates either from the Section Councils or directly from the Branches. The role of this form of organization is to coordinate and guide the work on a city-wide scale, and actively participate in or supervise Party activity in all public elections and civic affairs within its territory.

The City Council elects from among its members a City Executive Committee with the same rights and duties on a city-wide scale as the Section Executive Committee has on a Section-wide scale.

The State Committee may form County Councils with the same rights and duties on a county scale as the City Council has on a city scale.

The structures of the County Council shall be the same as of the City Council.

State or district organizations

For two months prior to the State Convention, discussion shall take place in all Party organizations on the main resolutions and problems coming before the Convention. During this discussion, all Party organizations have the right and duty to adopt resolutions and amendments to the Draft Resolutions of the State Committee, for consideration at the Convention.

Only members who are at least two years in the Party shall be eligible for elections to the State Committee. Exceptions may be made only by State or National Conventions. The size of the State Committee shall be decided upon by the Convention, in consultation with the National Committee.

The State Committee shall meet at least once every two months. It shall elect from among its members an Executive Committee to function with full power, which shall be responsible to the State Committee.

The State Committee, by a majority vote of its members, may replace any regular member who is unable to serve because of sickness or other assignment, or who is removed from office. New regular members shall be chosen from among the alternate members of the State Committee.

An auditing committee, elected by the State Committee, shall examine the books of the State Financial Secretary once every month.

A Certified Public Accountant shall audit these books at least once a year, and his report shall be presented to the State Committee and Conventions.

Special State Conventions may be called by a majority vote of the State Committee, or by the National Committee.

Upon the written request of Branches representing one-third of the membership of the State Organization, the State Committee shall call a special State Convention.

The call for a special Convention shall be subject to the approval of the National Committee.

The State Committee shall have the power to establish an official organ with the approval of the National Committee.

The State Committee shall conduct or supervise Party activity in all public elections and statewide public affairs within the state.

In states having more than one thousand members, the State Committee shall appoint a Disciplinary Committee with the task of hearing disciplinary cases, and reporting its findings and recommendations to the State Committee. In states with less than one thousand members, a Committee may be appointed if it is considered necessary.

The rules governing the organization and functioning of District Organizations shall be the same as those provided for the State Organizations.

Qualifications for delegates to conventions

Delegates to the State Conventions must be in good standing and have been members of the Party for at least one year.

Delegates to the National Convention must be in good standing and have been members of the Party for at least two years.

In special cases, the latter qualifications (length of time in Party) may be waived, but only with the approval of the leading committee involved (National Committee for the National Convention, State Committee for the State Convention).

Membership

It is within the provision of Article III, Section 1 of the Constitution that the following are eligible to membership in the Communist Party:

(*a*) Persons who, by some present unjust and undemocratic laws, are excluded from citizenship and disbarred from legally declaring their intentions of becoming citizens.

(*b*) Students and others temporarily residing in the country.

(*c*) All persons coming from countries contiguous to the United States, engaged in migratory work, and temporarily in the country.

Rate of dues

Dues shall be paid every month according to the following rates:

(*a*) Housewives, unemployed, and all members earning up to $47.00 a month, shall pay 10 cents a month.

(*b*) All members earning from $47.01 to $80.00 a month inclusive shall pay 25 cents a month.

(c) All members earning from $80.01 to $112.00 a month inclusive shall pay 50 cents a month.

(d) All members earning from $112.01 to $160.00 a month inclusive shall pay $1.00 a month.

(e) Members earning more than $160.00 per month shall pay, besides the regular $1.00 dues, additional dues at the rate of 50 cents for each additional $10.00 or fraction thereof.

Al dues payments must be acknowledged in the membership book by dues stamps, issued by the National Committee.

Transfers and leaves of absence

Members who move from one neighborhood, shop or industry to another and have to go from one Branch to another, shall obtain transfers from their Branches. No member shall be accepted by the new Branch without a properly filled-out transfer card. Before receiving transfers, members shall be in good standing and have paid up all other financial obligations to their Branches. If a member transfers from one Section or City Organization to another, a duplicate transfer card shall be transmitted through the State or District Committee. If a member transfers from one State or District to another, this shall be recorded in the membership book, and a duplicate transfer card shall be sent through the National Committee.

No member has the right to take a leave of absence without the permission of his Branch. Leaves of absence not exceeding one month may be granted by the Branch. An extended leave of absence, upon the recommendation of the Branch, shall be acted upon by the next higher committee of the Party. Before a leave of absence is given the member shall pay up dues, and settle his financial obligations up to and including the end of the leave of absence period.

Readmittance

Expelled members applying for readmittance must submit a written statement and their applications may not be finally acted upon except with the approval of the National Control Commission.

Former members whose membership has lapsed must submit a written statement on application for readmission, to be finally acted upon by the respective State Committees.

Mr. TOOHEY. One Senator asked me about the constitution. I might call your attention to the preamble of this constitution as to the program of the Communist Party. Will you allow me to take a minute and a half to read it to you?

Senator VAN NUYS. Go ahead.

Mr. TOOHEY (reading):

The Communist Party of the United States of America is a working-class political party carrying forward to-day the traditions of Jefferson, Paine, Jackson, and Lincoln, and of the Declaration of Independence; it upholds the achievements of democracy, the right of "life, liberty, and the pursuit of happiness," and defends the United States Constitution against its reactionary enemies who would destroy democracy and all popular liberties: it is devoted to defense of the immediate interests of workers, farmers, and all toilers against capitalist exploitation, and to preparation of the working class for its historic mission to unite and lead the American people to extend these democratic principles to their necessary and logical conclusions:

By establishing common ownership of the national economy, through a government of the people, by the people, and for the people; the abolition of all

exploitation of man by man, nation by nation, and race by race, and thereby the abolition of class divisions in society; that is, by the establishment of socialism, according to the scientific principles enunciated by the greatest teachers of mankind, Marx, Engels, Lenin, and Stalin, embodied in the Communist International; and the free cooperation of the American people with those of other lands, striving toward a world without oppression and war, a world brotherhood of man.

To this end, the Communist Party of the United States of America establishes the basic laws of its organization in the following constitution.

Senator VAN NUYS. How old is the Communist Party of America?

Mr. TOOHEY. It was organized in 1919.

Senator VAN NUYS. Have representatives of the party been attending these international congresses?

Mr. TOOHEY. Occasionally.

Senator VAN NUYS. How often have they attended them?

Mr. TOOHEY. I could not say.

Senator VAN NUYS. Did you ever attend one of them?

Mr. TOOHEY. No, sir.

Senator VAN NUYS. Did Earl Browder ever attend one of them?

Mr. TOOHEY. I think so.

Senator VAN NUYS. The Communist Party of America then does have a connection with the Communist Party of Russia, does it not?

Mr. TOOHEY. As the constitution declares, the Communist Party has some representation in some 76 countries federated together in a loose form. In every 3 or 5 or 7 years they meet together and discuss various matters in which they may be interested, and adopt certain resolutions and bylaws in relation to economic and political problems of the world at large.

Senator VAN NUYS. That is in the international conference?

Mr. TOOHEY. Yes. These findings of the international congress are studied by the various Communist Parties for their acceptance or their rejection.

Senator VAN NUYS. Senator Wiley asked you something about your connection with the Communist Party of Russia and your connection with Stalin or your relations with him. I am not sure I understood your answer.

Mr. TOOHEY. Stalin is a Communist, and I also am a Communist.

Senator VAN NUYS. I notice on page 5 of this constitution the following statement:

That is, by the establishment of socialism, according to the scientific principles enunciated by the greatest teachers of mankind, Marx, Engels, Lenin, and Stalin, embodied in the Communist International.

Mr. TOOHEY. That is correct.

Senator VAN NUYS. And you feel that way now, do you?

Mr. TOOHEY. I do.

Senator VAN NUYS. And you are a representative here of the Communist Party.

Mr. TOOHEY. I am.

Senator VAN NUYS. Then you are tied up with Stalin and his philosophy 100 percent, are you not?

Mr. TOOHEY. Stalin stands for socialism, and so do I.

Senator VAN NUYS. You heard my question. You are tied up with Stalin, are you not?

Mr. TOOHEY. I am tied up with nobody but the American Communist Party and the working class.

Senator VAN NUYS. And you think his record justifies that statement, that he is one of the greatest teachers of mankind? Do you still think that?

Mr. TOOHEY. I think, in considering the interests of the working class, that Stalin, together with these others I have mentioned, have contributed to the development of the labor movement.

Senator VAN NUYS. The labor movement. What do you mean by that?

Mr. TOOHEY. The world labor movement.

Senator VAN NUYS. What do you mean by that when you refer to it in America?

Mr. TOOHEY. I mean the American working people.

Senator VAN NUYS. Do you refer to the A. F. of L. and the C. I. O.?

Mr. TOOHEY. No; the American working people; all those who are fighting for a better day; all those who believe in the philosophy of those four great teachers.

Senator VAN NUYS. Do you not know that the American workers have the best food, the best houses, the best education, and the highest standard of living of any working people in the world today?

Mr. TOOHEY. I don't know about that.

Senator VAN NUYS. Do you not know that is true?

Mr. TOOHEY. It is not true.

Senator VAN NUYS. And you would apply to the American workers the philosophy and program of Stalin?

Mr. TOOHEY. Yes; where we have one-seventh of the Nation underfed, underclothed, and underhoused. The Negro people get only 60 percent, according to the surveys that have been made, not more than $500 a year. That is the majority of the Negro people. That is characteristic of the working class. I am opposed to the accumulation of great wealth in the hands of a few while millions of people starve.

Senator WILEY. I agree with some of the things you have said. A great deal has happened to the workers in Russia under the rule of Stalin. You would not want to apply those Russian methods to the workers in this country, I am sure.

Mr. TOOHEY. I would want to apply the methods of socialism.

Senator WILEY. Do you want to apply the methods of Stalin, or the standard American methods?

Mr. TOOHEY. I don't know what you mean by "American methods."

Senator WILEY. You spoks of Marx in connection with Stalin. Do you believe the labor of the individual belongs to the state?

Mr. TOOHEY. No; not necessarily.

Senator WILEY. Would you apply the same methods to labor in this country that are applied under Stalin in Russia, under the so-called socialistic government?

Mr. TOOHEY. Your understanding of socialism is not mine.

Senator WILEY. I am asking you about your understanding. I would like to have you answer my question. Would you apply Stalin methods here?

Mr. TOOHEY. Do I agree with Stalin?

Senator WILEY. Yes.

Mr. TOOHEY. I don't know that what you have stated is the theory of Stalin.

Senator WILEY. Do you believe, under your own theory, that the state should control labor, and the state should collect the wages of labor?

Mr. TOOHEY. No. That is not socialism.

Senator WILEY. Is not that the practice in Russia?

Mr. TOOHEY. Not to my knowledge.

Senator WILEY. Is the Communist International an association or organization?

Mr. TOOHEY. It is a loose association which prepares certain material for articles and world-wide distribution, and matters of that kind.

Senator VAN NUYS. Does it have an office?

Mr. TOOHEY. Yes.

Senator VAN NUYS. Who is its head?

Mr. TOOHEY. George Demitri.

Senator VAN NUYS. Where is its headquarters?

Mr. TOOHEY. Moscow.

Senator VAN NUYS. Does it have any other office?

Mr. TOOHEY. I believe not. They are scattered around in about 76 countries.

Senator VAN NUYS. Is there any other principal office?

Mr. TOOHEY. Not to my knowledge.

Senator VAN NUYS. Who sends out this material? Does it have a staff at headquarters?

Mr. TOOHEY. At the headquarters of the Communist Internationale.

Senator VAN NUYS. Where is that?

Mr. TOOHEY. Moscow.

Communism in the United States is the American Communist Party. The members of the American Communist Party are the representatives of the American working people.

Senator VAN NUYS. Why are you so anxious to segregate the United States from the other 76 countries which you referred to?

Mr. TOOHEY. I am not.

Senator VAN NUYS. The Communist Internationale contains these seventy-odd units, with its headquarters in Russia?

Mr. TOOHEY. No. While it is true that there have been conferences held in Russia, it is also true that there have been conferences held in other parts of Europe. There were conferences in Germany before the time of Hitler.

Senator VAN NUYS. You are not answering my questions. You are obviously an intelligent man.

Mr. TOOHEY. Thank you very much.

Senator VAN NUYS. I am asking you for the structure of the Communist Party. I understand it is composed of units in various countries approximating 70 in number.

Mr. TOOHEY. That is right.

Senator VAN NUYS. Then we understand each other. I was talking about this organization to which you have referred. I understand that all centers in Russia.

Mr. TOOHEY. Not necessarily.

Senator VAN NUYS. I want to know if you have any other place in the world from which your propaganda and doctrines emanate.

Mr. TOOHEY. Yes, sir.

Senator VAN NUYS. Where?

Mr. TOOHEY. The American Communist Party, organized by the American working class.

Senator VAN NUYS. I did not ask you about that.

Mr. TOOHEY. Are you interested in finding out about Russian money?

Senator VAN NUYS. Yes. Let us have an answer to this question, whether you have any international center from which emanates those doctrines, other than Russia?

Mr. TOOHEY. International center?

Senator VAN NUYS. Yes.

Mr. TOOHEY. At the moment the headquarters of the Communist Internationale are in Russia.

Senator VAN NUYS. Who is the secretary of the Internationale?

Mr. TOOHEY. George Demitri.

Senator VAN NUYS. What connection does Stalin have with that Internationale?

Mr. TOOHEY. As far as I can tell—I don't recall. I know some of the officers, and some I don't know. But the Russian Communist Party is a fraternal part of the Internationale.

Senator VAN NUYS. This is for my information: The present Communist Internationale you are speaking about is really what is known as the Third Internationale, is it not?

Mr. TOOHEY. Yes.

Senator VAN NUYS. There was a First Internationale, a Second Internationale, and now a third. You say you are preaching socialism. Is it not true that socialists do not belong to the Third Internationale, but compose an organization wholly and entirely separate from communism? Is that right or not?

Mr. TOOHEY. The whole world knows that.

Senator VAN NUYS. Yes; I know. I wanted that in the record.

Mr. TOOHEY. Yes; of course.

Senator VAN NUYS. Socialists are represented by the Socialist Party, and do not belong to the Third Internationale?

Mr. TOOHEY. No.

Senator VAN NUYS. Of what is the Third Internationale made up?

Mr. TOOHEY. The members of the Communist Party.

Senator VAN NUYS. Who is the representative from America on this Third Internationale?

Mr. TOOHEY. I do not know.

Senator VAN NUYS. You do not know?

Mr. TOOHEY. I can't recall.

Senator VAN NUYS. What relation does Earl Browder have to it?

Mr. TOOHEY. He is the secretary of the American Communist Party.

Senator VAN NUYS. What connection does he have with the Third Internationale?

Mr. TOOHEY. I could not answer your question.

Senator VAN NUYS. Do you mean to say that you do not know what connection he has with the Third Internationale, in view of your relations with the Communist Party of America?

Mr. TOOHEY. I say I do not know.

Senator VAN NUYS. Where are these 76 representatives of this organization? Where are they located?

Mr. TOOHEY. It does not necessarily follow that there must be one in each country.

Senator VAN NUYS. Is there one each in the majority of the countries?

Mr. TOOHEY. That I do not know.

Senator VAN NUYS. What position do you occupy with the Communist Party of America?

Mr. TOOHEY. State secretary of Pennsylvania.

Senator VAN NUYS. Are you a member of the national committee?

Mr. TOOHEY. Yes.

Senator VAN NUYS. How is that committee made up?

Mr. TOOHEY. It is a committee of 60 people.

Senator VAN NUYS. How is it made up? From where or what are they selected?

Mr. TOOHEY. From the members of the Communist Party?

Senator VAN NUYS. By States?

Mr. TOOHEY. By States, by ability, by experience.

Senator VAN NUYS. How many representatives are there in Pennsylvania?

Mr. TOOHEY. I think about three or four.

Senator VAN NUYS. Of which you are one?

Mr. TOOHEY. Yes, sir.

Senator AUSTIN. Do you know the name of the Vermont representative on your committee?

Mr. TOOHEY. You would be surprised, Senator Austin——

Senator AUSTIN. No; I am not surprised. I know something about the situation there. Do you know the name or the names of the representatives of the Communist Party in Vermont?

Mr. TOOHEY. Yes.

Senator AUSTIN. Will you state their names?

Mr. TOOHEY. I think that I know them. I am not certain. For that reason, I would not like to go on record as saying so, as naming them.

Senator AUSTIN. You need not be afraid.

Mr. TOOHEY. I am not afraid.

Senator AUSTIN. Then will you state who they are?

Mr. TOOHEY. I would rather not. I am too uncertain about it to make a statement. I know a number of them from Vermont. I am sure of the names.

Senator AUSTIN. You are not sufficiently acquainted with the members of your committee to know the names of those who represent Vermont?

Mr. TOOHEY. No. I probably may know their names, but I might have them confused with the names of members from other States, like New York, and others.

Senator AUSTIN. The Communist Party is not a secret organization, is it? Anybody has access to its membership.

Mr. TOOHEY. The Communist Party is not an illegal organization, and it is not a secret organization.

Senator AUSTIN. It is not a secret organization?

Mr. TOOHEY. No. I would like to ask what this line of questioning has to do with the antilynching bill.

Senator AUSTIN. It may not have much to do with the antilynching bill, but it may have something to do with the spreading of propaganda by your party, in reference to the antilynching bill.

Mr. TOOHEY. May I answer that?

Senator AUSTIN. Anything you please.

Mr. TOOHEY. I have tried to answer your questions truthfully, and it seems to me they have no bearing on the antilynching bill.

Senator CONNALLY. You approve Stalin's methods in Russia, do you not?

Mr. TOOHEY. I want to answer that the same as I answered the last question here.

Senator CONNALLY. I am not trying to heckle you.

Mr. TOOHEY. Certainly that question is not germane to this inquiry.

Senator CONNALLY. The committee will determine whether it is germane or not. You are supposed to answer what we ask you. The committee will have to determine whether your testimony is pertinent or not. You came here as an officer and representative of the Communist Party. That raises the whole issue of the Communist Party in connection with this hearing.

Mr. TOOHEY. Had I known I was going to be called upon to give a lecture on the policies of the Communist Party, I would have had a different kind of statement. I would have dealt with foreign matters.

Senator CONNALLY. Just answer that question, and we will be through that much sooner. Do you believe in the administration of Stalin in Russia? You know whether you do or not.

Mr. TOOHEY. I don't know the intent and the purpose of the question.

Senator CONNALLY. That makes no difference. Do you approve of the administration of Stalin in Russia? Either answer the question or refuse to answer. If you are afraid or ashamed, you need not.

Mr. TOOHEY. I am not ashamed.

Senator CONNALLY. Well, do you or not?

Mr. TOOHEY. I don't see the propriety of that line of questions.

Senator CONNALLY. The committee can determine that. You cannot run this committee.

Mr. TOOHEY. I do not want to.

Senator CONNALLY. Do you or not approve the administration of Stalin in Russia?

Mr. TOOHEY. Allow me to say that it is very difficult to give a direct answer to such a question as that. I can't see where it has any connection with this bill.

Senator CONNALLY. Of course, if you do not want to answer that question, I will not attempt to force you to, if you are afraid to answer it.

Mr. TOOHEY. I am not afraid.

Senator CONNALLY. Then do you approve or do you not?

Mr. TOOHEY. The Soviet Union?

Senator CONNALLY. Yes. Do you approve of it?

Mr. TOOHEY. As a socialist nation.

Senator CONNALLY. All right. I see that you are not going to answer it. I did not think you would. I understood you to say something to the effect that Mr. Stalin is a great humanitarian, a great teacher. Do you think he was a great humanitarian and a great teacher when he had all that purging and murdering of hundreds and even thousands of Communists? Where he would try them at night and execute them before breakfast the next morning? Do you call that humanitarianism?

Mr. TOOHEY. I understand that he was simply protecting the Soviet Union against enemies of the Soviet people, the working class.

Senator CONNALLY. You think it was all right for Stalin to kill them because they were enemies of his regime, do you?

Mr. TOOHEY. Enemies of his regime and the entire socialist regime, the entire Soviet Union.

Senator CONNALLY. You think that it was right to kill them because they were not in entire agreement with his policies?

Mr. TOOHEY. I would say that those people were executed because they were trying to overthrow the Soviet Union.

Senator CONNALLY. Then you approve what Mr. Stalin did toward the purging of these people, because he concluded they were enemies of the state and were conspiring against him? Do you think that it was all right for Stalin to take them out and shoot them, do you?

Mr. TOOHEY. I think if they were conspiring against the Soviet Union—I would say that anybody who was conspiring against the United States the way they were doing against the Soviet Union, the way they claimed they were doing, the United States Government would protect itself against them. I believe the American Government would take action to defend itself.

Senator CONNALLY. We would try them and give them the right of appeal.

Mr. TOOHEY. I am not altogether familiar with what was done over there. I would have some sympathy with some of those people, as I have some sympathy for the victims of the Ku Klux Klan.

Senator CONNALLY. I understand that the Communist Party does not believe in any sort of racial segregation at all?

Mr. TOOHEY. We do not.

Senator CONNALLY. You are in favor of social equality between whites and blacks? You favor that, do you not?

Mr. TOOHEY. We believe——

Senator CONNALLY. Do you or not?

Mr. TOOHEY. We believe in political, economic, and social equality of all American citizens without discrimination.

Senator CONNALLY. Absolute social equality between whites and blacks?

Mr. TOOHEY. Yes, sir.

Senator VAN NUYS. The committee will stand adjourned, subject to call.

(Whereupon, at 12 noon, the subcommittee adjourned, subject to the call of the chairman.)

CRIME OF LYNCHING

TUESDAY, MARCH 12, 1940

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

The subcommittee met in the caucus room, No. 318, Senate Office Building, at 10:30 a. m., Senator Frederic Van Nuys (chairman), presiding.

Present: Senators Van Nuys (chairman), Neely, Connally, and Austin.

Present also: Hon. Kenneth McKellar, a Senator in Congress from the State of Tennessee.

Senator VAN NUYS. The committee will come to order. All right, Senator.

STATEMENT OF HON. KENNETH McKELLAR, A SENATOR IN CONGRESS FROM THE STATE OF TENNESSEE

Senator MCKELLAR. Mr. Chairman, some time ago I wrote a letter to each one of the Governors of the Southern and border States, stating the situation as I saw it, and urging each one of them to do everything within their power to stop lynching in their several States. I did that 2 years ago, and we got very excellent results, we got excellent replies from the Governors and the best kind of cooperation.

When I learned that this bill was coming up again, I again wrote the several Governors, some of them having changed in that time, and asked them to cooperate. And I want to introduce at this part in the record a copy of the letter that I wrote to each one and a copy of the replies that I have received from each Governor of a State. I have not read those, I have not read them all and I have not the time to read them now; but I want to insert them in the record as a part of my testimony.

Senator VAN NUYS. Now, is the letter you sent to each Governor the same?

Senator MCKELLAR. The same. I have not got a copy of it here, but I will bring that letter for the stenographer, to let him put that in.

Senator VAN NUYS. We can print that once, and then the several replies; is that right?

Senator MCKELLAR. I am going to hand the batch to the stenographer and ask him to take out everything except the last letter,

which is my answering letter, a copy of which I wrote to each one and which is the same.

(The letters referred to are in full as follows:)

FEBRUARY 9, 1940.

HON. PRENTICE COOPER,
Nashville, Tenn.

MY DEAR GOVERNOR COOPER: On January 8, 1938, when the Wagner anti-lynching bill was before the Senate, I wrote the then Governor of Tennessee and the Governors of each Southern and border State telling them of the critical situation here in reference to the passage of this bill and requesting them to give me their views and to promise that they would use every possible effort to prevent any lynchings in their respective States. I received these promises from all of the Governors of the Southern States, and from several of the border States. I believe that the Governors and State authorities have made every endeavor to carry out their promise and have succeeded remarkably well.

In my judgment, the bill in the first place is clearly unconstitutional, but entirely outside of that I think the policy of the Federal Government legislating on this question is tremendously wrong.

I am sending you under separate cover a copy of this bill, together with a table of figures showing the crime of lynching by years, as taken from the Negro Yearbook published in Tuskegee, Ala.

You will note that in 1884 there were 160 white people lynched and 51 Negroes. From that time down to 1936 the lynching of white people gradually decreased until it ceased entirely in 1936. This was brought about solely by the action of the several States.

So in 1892, the lynching of Negroes reached the peak with 162 lynchings, and since that time the lynchings of Negroes has gradually decreased until 1938 when only 6 Negroes were lynched.

Last year, there was a further reduction to three alleged lynchings in the entire country, two Negroes and one white, but there is some doubt that one of these cases was a lynching. This tremendous decrease was brought about by the action of the State and local authorities.

While this tremendous and unparalleled decrease in this character of crime took place, the increase in all other crimes in the country, especially racketeering, has been manifold.

Federal crimes of all kinds have increased and there is no reason on earth for taking away from the States, even if it were constitutional to do so, their exclusive jurisdiction over this kind of murder.

As you know, I am unqualifiedly opposed to the crime of lynching and think that it should never be permitted. At the same time, in view of the record that the States have made in stamping out this crime, I do not think at this late day when lynchings have almost been stamped out entirely that there ought to be Federal legislation about it.

The bill has been introduced again, both in the House and in the Senate. The House has already passed it. If it is voted on in the Senate, that body will probably pass it.

We are fighting with our backs to the wall here. Will you not assist us by writing a letter giving your views as to the necessity and the policy of such a law turning over to the Federal Government the right to intervene in lynching cases? Also please state what efforts you have made to prevent this crime and give any instances where State authorities have been alert and vigilant in the prevention of this crime. I shall greatly appreciate your early reply.

Very sincerely yours,

KENNETH MCKELLAR.

The list of lynchings, as given in the World Almanac, as prepared by Monroe N. Work, director, department of records and research, Tuskegee Institute, Ala., and editor of the Negro Yearbook

Year	White	Negro	Total	Year	White	Negro	Total
1882	64	49	113	1912	2	61	63
1883	77	53	130	1913	1	51	52
1884	160	51	211	1914	3	44	47
1885	110	74	184	1915	18	57	75
1886	64	74	138	1916	5	49	54
1887	50	70	120	1917	3	36	39
1888	68	69	137	1918	4	60	64
1889	76	94	170	1919	6	74	80
1890	11	85	96	1920	7	53	60
1891	72	113	185	1921	4	58	62
1893	69	162	231	1922	6	51	57
1893	34	117	151	1923	4	29	33
1894	58	134	192	1924	0	16	16
1895	66	113	179	1925	0	17	17
1896	45	78	123	1926	7	23	30
1897	35	123	158	1927	0	16	16
1898	19	101	120	1928	1	10	11
1899	21	85	106	1929	3	7	10
1900	9	106	115	1930	1	20	21
1901	25	105	130	1931	1	12	13
1902	7	85	92	1932	2	6	8
1903	15	84	99	1933	4	24	28
1904	7	76	83	1934	0	15	15
1905	5	57	62	1935	2	18	20
1906	3	62	65	1936	0	9	9
1907	2	58	60	1937	0	8	8
1908	8	89	97	1938	0	6	6
1909	13	69	82				
1910	9	67	76	Total	1,293	3,393	4,686
1911	7	60	67				

A letter similar to the above was sent by Senator McKellar to the Governors of the southern and border States and their replies are in full as follows:

STATE OF ALABAMA,
EXECUTIVE DEPARTMENT,
Montgomery, March 4, 1940.

HON. KENNETH MCKELLAR,
Senate Office Building, Washington, D. C.

MY DEAR SENATOR: I am sorry to have delayed answer to your letter of February 9 with reference to the Wagner antilynching bill. The delay was caused by absence from my office and not by any lack of interest.

We do not have lynchings in Alabama. The entire power of the State government, for the past many years, has been thrown behind the effort to stop this type of crime, and it does not exist in our State. Should any threat of lynching occur during my administration it would instantly be met with whatever force was necessary, and should any law officer in Alabama be guilty of negligence in this regard he would be proceeded against at once.

Even a casual study of the situation clearly shows that every southern State has the same attitude toward the problem. In the light of the record, the bill very definitely appears to be a threat against State sovereignty, and thereby against the right of any people to conduct their own affairs. In some cases, by reason of changed conditions, it can be argued that interference by the Federal Government is justified on the ground of necessity. In the case of this bill it definitely cannot. The present swing of the Federal Government toward the assumption of power in the local affairs of the States is, in my opinion an extremely dangerous one. Followed to its logical conclusion, it will result in the unquestioned control by the Washington bureaucracy of the personal, private, and daily affairs of every citizen of the United States wherever located. It will lessen the power of a minority to protect itself against aggression by a majority. It will remove the control of the acts of officials from the people whose servants they are supposed to be. It cannot fail to be disastrous to our American way of life and to the continued existence of the basic principles which have maintained, often against attack, the liberties of our people.

The unanimous opinion of the people of this State is that the Wagner anti-lynching bill is advocated and pushed solely as a sectional issue and for the purpose of securing votes on the part of those who have a substantial Negro element in their constituency, and our people are also convinced that enough social problems exist in the constituency of the gentlemen who are advocating this bill to consume their entire time from now on, if they devote their attention to the affairs of their constituents and not to those of people far removed from their section of the country.

We make no claim to divine wisdom in our handling of the problem presented by the existence of the two races in the South. The best thought of our people is devoted to it, and in my opinion we are making progress. One thing that disturbs us far more than the lynching problem, which is non-existent, is the problem of poverty among the Negroes, a factor which necessitates the carrying of a tremendous burden by our taxpayers for education, health, and relief. Might I suggest that great good could be done if, instead of attention to this bill, the gentlemen who are advocating it would devote their time and thought to the removal of the unfair barriers which have kept this section, and thereby these people, in poverty. I refer, of course, to the unfair freight rate differentials, primarily; secondarily, the tariff; there are many others, including the glaringly disproportionate distribution of relief funds with which all are familiar.

It is further our opinion that passage of this bill would immediately and definitely make for bad relationship between the races. It would hurt, far more than it would help, the very people who are its supposed beneficiaries. It would make far more difficult the problem of those of us who are charged with the maintenance of peaceful relations between the races, and who are honestly anxious to see the advancement of the Negroes among us. It is very definitely and demonstrably unwise.

It is my sincere hope, as Governor of the State of Alabama, that this bill will be decisively defeated in the Congress, with a vote so large that many years will elapse before the attempt to pass it is again made. The people of this State are unanimous against it, and they are looking to their representation in Congress to use whatever legitimate means are available to secure its defeat.

With highest personal regards, I remain,

Very truly yours,

FRANK M. DIXON,
Governor of Alabama.

EXECUTIVE OFFICE, STATE HOUSE,
Phoenix, Ariz., February 13, 1940.

Hon. KENNETH MCKELLAR,
United States Senate, Washington, D. C.

DEAR SENATOR MCKELLAR: Reference is made to your letter of February 9, 1940, concerning the Wagner antilynching bill now pending before the United States Senate.

We in Arizona are in complete sympathy with those who would banish once and for all that medieval method of punishment—the lynching bee. We propose to do everything in our power to prevent a recurrence of the practice, which has been dormant in Arizona for many years. We feel that our own enforcement officers are quite capable of handling any situation which might arise wherein mob groups threaten to take the law into their own hands by lynching a man or woman without waiting for the law to take its course.

We are opposed to this particular bill because we feel that our sister States, like us, are not only aware of the problem but have shown that their enforcement facilities are not only fully adequate to cope with local conditions but have made almost sensational progress in reducing the number of deaths from this cause about 75 percent within the past 10 years. Lynching has thus been reduced to the category of a minor problem, and we feel that the States are quite capable of handling it without the assistance of the Federal Government.

I trust this letter fully answers your questions.

With kind personal regards, believe me,

Sincerely yours,

R. T. JONES, *Governor.*

STATE OF ARKANSAS,
OFFICE OF THE GOVERNOR,
Little Rock, February 15, 1940.

Senator KENNETH MCKELLAR,
Senate Office Building, Washington, D. C.

DEAR SENATOR MCKELLAR: This is in response to your letter of February 9 in regard to H. R. 801 which is the proposed "anti-lynching bill."

Upon reading your letter and this bill, I am reminded again of the strange assumption so frequently indulged in in Washington. That is the assumption that a human being occupying an appointive Federal office far removed from the bosom of the people is a more competent, a more honorable, and a more energetic human being than one who lived close to the people and conforms himself privately and officially to the policy and philosophy of the Constitution of the United States which designates the States as sovereign entities. Furthermore, as your figures on lynching so completely demonstrate, H. R. 801 proposes to palliate or correct an evil which does not exist.

The fact that there has been no legislative proposal presented to the Congress for recompense to the victims of murderers and rapists is eloquent evidence that this is merely an effort to accomplish the strange situation of domination of the majority by a minority group. Why in the name of constitutional government, the democratic process, and a free people it is necessary for representatives of the minority group to continue to endeavor to inflame racial prejudice is beyond my comprehension. The adoption of this legislation by the National Congress will, of course, give color of official conformation to the inflammatory slanders announced against the people of the South by speakers such as one of those appeared before the National Youth Congress recently and for whose inaccurate and inflammatory statements the Attorney General of the United States and the President of the United States found it expedient to offer immediae chastisement.

In 1927 I entered the office of prosecuting attorney in the sixth judicial district of this State as a deputy. In April of that year a young Negro enticed an 11-year old white girl into the basement of a church upon a pretense that the church was giving children candy and other gifts. The Negro, by his own confession, ravished the child, forced her to climb into the bell tower, and there murdered her by cutting her throat and beating her skull in with a brick. Her disappearance for a period of 2 weeks caused great excitement. Ultimately the effluvia from her putrefied little body revealed her whereabouts. This boy was the son of the church janitor. He was, in consequence, together with others, suspected, taken into custody. When he confessed he was given every protection by the law-enforcement authorities. In a few weeks he was brought to trial, was found guilty of this unspeakable crime, and was executed for it. Of course, public sentiment ran high, but there was no lynching.

Apparently encouraged by this Negro's action, within a few days thereafter another Negro of more mature years attacked a woman and her daughter who were driving a team and wagon from the rural section of this county toward Little Rock. This Negro was captured in the woods near where the attack occurred. The law-enforcement officers had no opportunity to protect him against the intensified anger of the public occasioned by the commission of these two crimes. This Negro was lynched. Grand-jury investigations followed, and though it was impossible to bring about indictments, those who are suspected to have been the leaders have since suffered a measure of ostracism that is socially painful and economically expensive.

Since that lynching in April of 1927, insofar as I am informed there has not been a lynching within the State of Arkansas of either white or black. In the meantime, other crimes calculated to provoke and arouse a high degree of public resentment have occurred, but in all situations the officers have had public approbation in protecting their prisoners and bringing about their trial by the orderly processes of constitutional democratic government.

In recent months a Negro ravished and murdered a white girl in Jefferson County near Pine Bluff. Her body was weighted and thrown into a stream. Upon apprehension the sheriff protected the prisoners and they were given a fair and orderly trial, resulting, of course, in conviction and execution.

Just recently two Negroes were executed for rape committed in Mississippi County, Ark. This crime was particularly atrocious. The girl involved was a white girl, a resident of Memphis, Tenn. The crime was committed more than 5 years ago. Those representing these Negroes kept these cases in State and

Federal courts more than 4 years and then applied to the Governor for commutation or pardon. Before execution, one of the Negroes made an outright confession of the crime and by implication condemned the other. In the meantime the young lady who was brutalized has completely lost her reason. I wonder what compensation the advocates of the antilynching bill would suggest that the Congress provide for such victims as the young lady in this case.

It is gratifying to know that it is your determination and the determination of others associated with you in the United States Senate to neglect no weapon and to be willing to pay any price in exerted energy to prevent this desecration of the Constitution and humiliation of a large section of the citizenship of the United States.

Very sincerely yours,

CARL E. BAILEY, *Governor.*

STATE OF GEORGIA,
EXECUTIVE DEPARTMENT,
Atlanta, February 23, 1940.

E. D. RIVERS, *Governor.*

Hon. KENNETH MCKELLAR,
United States Senator, Senate Office Building, Washington, D. C.

DEAR SENATOR MCKELLAR: I regret that I have been unable to present your letter to the Governor, but he has been away from the office a great deal of the time since this was received, and is at present in Florida attending a meeting of the Southern Governors and will not return to the office until Thursday of next week. However, at that time I shall certainly be glad to present your letter to him and I am sure you will hear from him personally.

I remember most pleasantly our meeting in Chattanooga, at which time the President visited your State and inspected Lookout Mountain and other points of interest in Chattanooga, and sincerely hope I will have the pleasure of seeing you again within the near future.

With best wishes from both the Governor and myself, I am

Sincerely yours,

(Signed) DOWNING MUSGROVE,
Secretary, Executive Department.

DM:W

STATE OF LOUISIANA,
EXECUTIVE DEPARTMENT,
Baton Rouge, March 7, 1940.

Hon. KENNETH MCKELLAR,
United States Senator, Washington, D. C.

DEAR SENATOR MCKELLAR: With regard to the Wagner antilynching bill, about which you wrote me on February 9, I feel that the State of Louisiana is unalterably opposed to it on a constitutional grounds, because there would be no need for it here if it were constitutional, and because it would be of no practical benefit to anyone, while its passage would reflect upon our State and our law enforcement officers. I shall not discuss the constitutional questions involved, because I am sure you have plenty of data on that subject.

The purpose of the act is to coerce law enforcement officers to perform their duties with regard to preventing lynchings. There is certainly no need for such a measure in Louisiana. The following is a record of the number of lynchings in our State by years since 1899:

1899	13	1913	6	1927	1
1900	20	1914	12	1928	2
1901	14	1915	2	1929	0
1902	10	1916	2	1930	0
1903	3	1917	5	1931	1
1904	3	1918	0	1932	1
1905	4	1919	7	1933	4
1906	8	1920	0	1934	2
1907	11	1921	5	1935	4
1908	8	1922	3	1936	0
1909	11	1923	1	1937	0
1910	4	1924	1	1938	1
1911	4	1925	1	1939	0
1912	8	1926	0		

Since 1921 through 1939 there have been a total of 22 lynchings in Louisiana, which is an average of slightly over 1 per year. During the 4-year period 1936-39 there was only 1 lynching. That is the last lynching we have had. It occurred in 1938. The victim had not been apprehended by any officer of the law prior to his lynching. The enclosed letter from Brig. Gen. Raymond H. Fleming, Aajutant General of Louisiana, gives a detailed account of the activity of the Louisiana National Guard in an effort to prevent violence in this instance. See also the New York Times for October 14, 1938, page 14.

Our sheriffs and other law enforcement officers make every effort to avoid a lynching whenever they have reason to suspect that there is danger of one. When it comes to their attention that local feeling is running high against a criminal suspect in their custody, they remove him to a prison in another part of the State. If a mob attempts to take a prisoner from them they resist the mob with all the power at their disposal. An example is the averting of the attempted lynching of M. Thibodeaux at Labadieville, La., in 1933. See the New York Times for December 27, 1933. Again, Gen. L. F. Guerre, superintendent of State police, describes in a letter which is enclosed, the successful efforts of the State police in averting the lynching of Clerk Herrin, in Jonesboro, La., in April 1938.

In this connection I may state that pledges against lynchings have been taken in 51 or our 64 parishes (counties) and 109 of our towns by 886 women, 36 men, and 185 officers.

With regard to the effect of the Wagner Antilynching Act, if it were adopted and if it passed the test of constitutionality, there could be practically no occasion for its application in Louisiana, with the continued vigilance of our officers. While its primary purpose is to preventing lynchings, a reading of the act shows that its immediate purpose is to penalize peace officers and counties (parishes with us) when lynchings occur throught the failure of peace officers to exercise diligence in attempting to prevent them. Consequently, if a lynching occurred but the peace officers had done all they could to prevent it, no penalty could be imposed under the act. And os it is the custom of our peace officers to use all means in their power to prevent lynchings, as we have said, the occasion for the imposition of any penalty, either by way of damages, fine, or imprisonment, under the act in Louisiana would be unlikely.

Why should Congress undertake to regulate lynching? Clearly, the Wagner Antilynching Act would be an invasion of the rights of the States and a violation of the spirit of the Constitution even if the courts should hold that it did not violate the letter. As statistics shows, lynching is a very rare crime. Murder, robbery, and other crimes of violence are infinitely more numerous. They, as well as lynching, deny equal protection and due process of law to their victims (which is the excuse given in section 1 of the Wagner Act for its passage). If we adopt the theory that the Federal Government should undertake the prevention and punishment of one crime, and that a rare one such as lynching, which denies to its victims equal protection and due process of law, why should the Federal Government deny their victims equal protection and due process of law? Of course, if we did that, the Federal Government would practically exclude the States from the field of the enforcement of law and order.

In my opinion the passage of such an act as the Wagner Antilynching Act could serve no useful purpose. It would be an insult by Congress to the States, and would serve to stir up ancient, almost forgotten, sectional hatreds.

Yours very sincerely,

(Signed) EARL K. LONG,
Governor of Louisiana.

STATE OF LOUISIANA,
DEPARTMENT OF STATE POLICE,
Baton Rouge, March 5, 1940.

His Excellency, EARL K. LONG,
Governor of Louisiana,
Baton Rouge.

DEAR GOVERNOR LONG: With reference to the information requested of you as to what steps this State has taken to prevent lynchings, wish to call your attention to the trial of Clerk Herrin, Negro, who was tried for murder in district court of Jackson Parish, said trial lasting from April 11 through 18, 1938.

Upon the request of the Honorable J. Rush Wimberly, district judge, District Attorney Talmadge Kinnebrew and Sheriff Nell Thomas, several officers

of this department were assigned to safeguard the Negro during the trial. Twelve officers under the direction of Major Roden, assistant superintendent, took over the guarding of the prisoner on Monday morning, April 11, and remained on duty continuously until the Negro was found guilty on April 13 and sentenced to life imprisonment. The Negro was returned to the parish jail at Monroe for safekeeping.

During the trial there were numerous rumors of threatened lynching if he was not found guilty and trouble was avoided by the prompt and diligent efforts of the State Troopers on duty.

Respectfully yours,

(Signed) L. F. GUERRE,
Superintendent.

STATE OF LOUISIANA,
OFFICE OF THE ADJUTANT GENERAL,
New Orleans, February 18, 1940.

Hon. EARL K. LONG,
Governor of Louisiana,
Executive Mansion, Baton Rouge, La.

MY DEAR GOVERNOR LONG: With reference to pending national legislation bearing on the subject of mob violence and lynching, I am enclosing reports from the organization commanders relative to two cases wherein calls were made by the civil authorities on the Governor of this State for military assistance to curb and quell mob action.

Both cases were resultant of captures and confessions obtained from parties who had committed criminal assaults and murder. One was a white man in Shreveport, April 17, 1934, and the other a Negro in Ruston, October 13, 1938.

Full cooperation was given to the civil authorities in each case, and in passing, it can be stated that never in my service as an officer of the Louisiana National Guard since 1916 and as adjutant general of the State since 1928, has there been any hesitancy on the part of any Governor of this State to lend his full cooperation and maximum military assistance to the civil authorities in the preservation of life and property from mob violence.

I sincerely hope that the enclosed material will be of some assistance to you.

Respectfully yours,

(Signed) RAYMOND H. FLEMING,
The Adjutant General.

Incls.

GENERAL FLEMING: Just as I was loading my men into the school bus, Lieutenant Fox drove up in his car and stated that he had just returned from the scene; that he had made a talk to the mob and tried to get them to turn the Negro over to the sheriff, but had no success whatever; that he then turned to leave; that before getting out of hearing distance he heard shots, and felt that it was all over, and that we could do no good by going.

I thought the matter over for a moment, trying to decide whether to dismiss my men, or whether to go on out to the scene. I thought of the fight that Senator Ellender had put up to prevent the passage by Congress of the anti-lynching bill. This lynching was occurring in Senator Ellender's State and I felt that this same bill was sure to come up again, and if it did this lynching would be thrown back at Senator Ellender. I decided that the best thing to do was to go on out to the scene, in order that the world might know that the civil authorities had done everything possible to prevent the lynching; that the lynching occurred regardless or notwithstanding the best efforts of the civil authorities; and that the lynching did not occur because of any laxness on the part of the civil authorities. If the bill comes before Congress again, I feel sure that Senator Ellender will be glad that we went on out.

Captain McB.

ONE HUNDRED FIFTY-SIXTH INFANTRY,
LOUISIANA NATIONAL GUARD, COMPANY F,
Ruston, La., October 16, 1938.

Subject: Mob duty of October 13, 1938, report on.
To: The Adjutant General of Louisiana, New Orleans, La.

1. On the night of Tuesday, October 11, 1938, while a white man and woman were parked in an automobile, on an unimproved road, about 150 yards from the

Dixie-Overland Highway, some 3 miles east of Ruston, they were attacked, the white man being knocked unconscious with a club. The woman was then criminally assaulted by the assailant, a Negro. When the white man began to regain consciousness and groan, the Negro beat him to death with his club. The woman ran to the highway while the white man was being beaten to death, where she was picked up by a passing motorist and brought to Ruston. Upon the officials receiving a report of the crime, they sent for bloodhounds. The bloodhounds picked up the assailant's trail and followed it for several hours. Along the trail of the hounds, near the house of a Negro man by the name of W. C. Williams, was found bloody clothing and other articles, which were identified by the assailant's grandmother and younger brother as being owned by the assailant. It was then felt that the identity of the assailant was known. It might be mentioned that on the night of Tuesday, September 13, 1938, a similar crime had been committed, at a place some 150 yards from the assailant's house and about three-fourths of a mile from the scene of the crime of October 11, 1938. The search for the assailant continued through Tuesday night, Wednesday, Wednesday night, and Thursday.

2. On Wednesday, at about 3:30 p. m., the sheriff of Lincoln Parish, La., told the undersigned that the first set of bloodhounds had worn themselves out and that a new set would arrive in about 2 or 3 hours and that he thought the Negro would be caught that night; that he wanted to do everything possible to avoid the possible lynching of the Negro (feeling was running very high), and that he possibly would want to call out the local National Guard company. The sheriff was told that the local company (Company F) would have a regular drill that night. He requested that the company be held as late as possible that night, or at least until further communications with him. The sheriff was told that it would be necessary for the undersigned to communicate with the Adjutant General of Louisiana, which he would do. The undersigned then put in a call for the adjutant general, and talked to him as soon as connections could be made. The adjutant general stated that he would talk to the Governor and for the undersigned to call him back by phone in the event the sheriff wanted the company called out.

3. Not having heard from the sheriff by the end of the regular drill period on Wednesday night, the undersigned got in his car and drove to the locality in which the hunt was being centered. There he contacted the sheriff and learned that the new set of bloodhounds had picked up the trail but had followed it into some burnt-over woods, where it was lost. The sheriff felt that the Negro had left the locality and that he would have to center the search in the vicinity of some relatives of the Negro, some miles away. He stated that the undersigned might dismiss his company, which was done.

4. At about 2:30 p. m., on Thursday, October 13, 1938, the undersigned was called over the phone by a special police officer of the city of Ruston, who stated that a mob had caught the Negro, that the Sheriff was there trying to get the Negro away from the mob, that the mob was standing the sheriff off, and that the sheriff had sent him to town to get help and that the sheriff wanted the National Guard company to come as quickly as possible. This officer was told that it would take some 20 to 30 minutes to assemble members of the company, and it would be necessary to first call the adjutant general. A call was put in immediately for the adjutant general, and the undersigned talked with assistant adjutant general, who stated that the adjutant general had talked with the Governor, and that for the undersigned to go ahead, using his best judgment in handling the situation. By 2:50 1 officer and 18 men were ready to proceed to the scene in a school bus. Upon arrival at the scene, it was found that the Negro had already been questioned by those who had him, hanged to a tree, shots fired into his body, and a fire started under him. It appears that about the time the Guard arrived the mob consented for the fire to be scattered and put out, in order that finger prints might be taken of the Negro so as to determine whether or not this Negro had committed the crime of September 13, 1938. In a few minutes the coroner arrived. The crowd had then quieted down, and those present seemed to be mere curiosity seekers. The undersigned then got the consent of the authorities to bring his company back to the armory and dismiss them which was done

5. The local paper, and perhaps others, carried a story to the effect that Lt. L. J. Fox of the National Guard made a talk to the mob and tried to get it not to lynch the Negro, thus giving the impression that the Guard was present at the time of the lynching. The facts in this respect are: When the call came for the company, Lieutenant Fox could not be located by telephone. It appears that he had gone out to the locality of the search that afternoon,

as many others had done. Upon his arrival he saw that the mob had the Negro. He made a talk, as an individual, appealing to the mob not to lynch the Negro, but to turn him over to the sheriff. He was not successful and left the scene. He did not know that the company had been called until after his return to Ruston.

6. The only expense incurred by the company, outside of the usual pay, was the engaging of a school bus to take the company to the scene. The owner of this bus has not as yet presented a bill, and as soon as he does it will be forwarded. The pay roll will be forwarded within a few days.

(Signed) WALTON E. MCBRIDE,
Captain, One Hundred and Fifty-sixth Infantry, Commanding Company F.

STATE OF LOUISIANA,
OFFICE OF THE ATTORNEY GENERAL,
New Orleans.

The following order from Governor O. K. Allen received by telephone, April 17, 1934, 11:15 p. m.:

"You will immediately order necessary troops to the support of the civilian authorities in Shreveport, La., where a mob is storming the courthouse and jail. Have your commanding officer report to the civilian authorities, especially the sheriff of Caddo Parish and the chief of police of the city of Shreveport, to assist them in preserving law and order and protecting public property.

"I am giving you this order because of the urgent requests from the civilian authorities of Caddo Parish and the city of Shreveport for assistance.

"O. K. ALLEN, *Governor.*"

At 11:20 p. m., April 17, 1934, Col. Hollingsworth B. Barret was ordered to assemble the necessary troops to handle the situation.

JUNE 28, 1934.

REPORT ON LOCKHART EMERGENCY

THE ADJUTANT GENERAL OF LOUISIANA.

1. The rendition of this report has been delayed due to illness of the reporting officer.

2. On Tuesday night, April 17, at about 7 p. m., it was announced publicly that one Lockhart, charged with statutory assault and murder, had confessed to the crime. This man was held in the parish jail of Caddo Parish, La.

3. At 7:30 p. m. the writer learned that a crowd was forming near the courthouse. He proceeded at once with several other local officers of the One Hundred and Fifty-sixth Infantry to the scene. Contact was made with the sheriff of Caddo Parish and the chief of police of the city of Shreveport.

4. Until approximately 10:50 p. m. the civilian authorities were of opinion that they could handle the situation. In the meanwhile the crowd, which had begun as a very good-natured crowd, had been added to by various elements, a small percentage of which determined to storm the jail. At 10:50 the sheriff of Caddo Parish called the writer in conference and advised that they were attempting to get the Governor of the State of Louisiana by telephone. An advisory telephone message was immediately given the Adjutant General of Louisiana. By telephone the sheriff of Caddo Parish was informed by the Governor's secretary that a telegraphic request should be made in writing by the proper officials. When this had been sent, warning messages were given the company commanders of Company E, Company F, and Company H.

5. At 11:20 p. m. orders by long distance from the adjutant general of Louisiana were given to call out the units of the second battalion less the headquarters company. In order to obtain speed in mobilization, it was thought best to call the quickly available members of each unit and to use this nucleus of four units, rather than to wait for the 100-percent mobilization of any unit.

6. It was decided not to use the National Guard until all units were available; but the pressure on the civilian authorities became so great that they insisted that the local unit assist. We therefore agreed, some 20 minutes before the arrival of H Company of Minden, to take over the two main entrances of the courthouse.

7. Units from Minden, Ruston, and Monroe were detrucked some distance from the scene of violence, according to prearranged instructions, and where guides awaited them.

8. The units moved in quietly, the courthouse square was cleared and opposite sidewalks cleared. The crowd dispersed.

9. Prior to the arrival of the National Guard considerable damage had been done to the entrances of the courthouse. The civilian authorities had requested that the National Guard assist in the preservation of property as well as order. There was no further loss of property after the Guard was mobilized.

10. At 7 a. m. the following morning gas guns with ammunition were received from New Orleans by automobile, together with 20 gas masks. The entire organization of the building and the grounds was based upon the use of the gas guns. They were kept at central points within the building, with protective squads of riflemen at each entrance. The rifle squads had been previously trained in the use of the wedge, and the formation to be adopted was the wedge of riflemen under the corporal with the gas gunners and ammunition carriers within the wedge.

11. The following night an attempt was made to form a crowd but patrols, assisted by civilian authorities, kept all pedestrian traffic moving on sidewalks opposite the courthouse square, and after 7 p. m. kept all sidewalks and grounds on the courthouse square clear of pedestrian traffic. No parking of automobiles was permitted at the curbs adjoining the courthouse square.

12. On April 19 at midnight it was thought best to economize by cutting the forces mobilized. This was done. The policy was adopted of heavily cutting the strength of the local unit, for the reason that men dismissed from duty from the local company were quickly available in case of emergency. A larger nucleus was kept from units from a distance.

13. The remaining forces remained on duty through the trial and sentence of the prisoner. The entire force was demobilized on Monday, June 23, 1934.

14. Though prior to the calling of the guard civilian authorities had followed their own advice, when the National Guard was called to duty we found the utmost cooperation from Sheriff T. R. Hughes, of Caddo Parish, and Chief of Police D. D. Bazer. They adopted all suggestions given.

15. The tactical plan of defense and observations regarding service in civilian emergencies could be discussed in detail. The three major conclusions, however, are:

1. That when there is a prospect of mob violence, no crowd however peaceful or good natured should be permitted to form near the scene.

2. That gas in adequate quantities is essentially the basis of National Guard service in such emergencies.

3. That every organization should be equipped with sufficient gas masks to adequately protect all men involved in the mission.

HOLLINGSWORTH B. BARRETT,
Colonel, 156th Infantry.

STATE OF MISSISSIPPI,
EXECUTIVE DEPARTMENT,
Jackson, February 14, 1940.

Hon. KENNETH MCKELLAR,
United States Senate, Washington, D. C.

DEAR SENATOR: I was pleased to acknowledge receipt of your letter with reference to the antilynching bill.

I regret very much that Congress is again considering the passage of this bill. I shall not discuss the legal phases of the bill, although it should appear to every Congressman that the bill is clearly unconstitutional.

I am pleased to state that never before has the friendly relation between the races been better in my State. There are no lynchings now. As Governor of Mississippi I am determined to enforce the law and prevent lynchings. It will be my purpose to exert every effort and use every influence at the Governor's command to maintain law and order and to protect each and every citizen, white or black, rich or poor to the end that they may receive the equal protection of the law.

I sincerely trust the committee will make an adverse report on the antilynching bill.

With kindest personal regards, I am,

Sincerely yours,

(Signed) PAUL B. JOHNSON,
Governor.

LLOYL C. STARK
Governor

EXECUTIVE OFFICE,
STATE OF MISSOURI,
Jefferson City, February 17, 1940.

HON. KENNETH MCKELLAR,
Senate Office Building, Washington, D. C.

MY DEAR SENATOR: Your letter of February 9 has been received in Governor Stark's absence and will be called to his attention at the first opportunity.

Very sincerely yours,

(Signed) SALLY W. POWELL,
Secretary to the Governor.

JOHN E. MILES
Governor

STATE OF NEW MEXICO,
EXECUTIVE DEPARTMENT,
Santa Fe, February 12, 1940.

HON. KENNETH MCKELLAR,
U. S. Senator, Senate Office Building, Washington, D. C.

DEAR SENATOR MCKELLAR: Your letter of February 9 addressed to Governor Miles has been received during the Governor's absence from the State, but I shall be glad to call your letter to his attention upon his return to the office.

Very sincerely yours,

(Signed) GUY SHEPARD,
Secretary.

STATE OF NORTH CAROLINA,
GOVERNOR'S OFFICE,
Raleigh, February 12, 1940.

HON. KENNETH MCKELLAR,
United States Senate, Washington, D. C.

MY DEAR SENATOR MCKELLAR: I have your letter of February 9, 1940, asking my views on the Wagner antilynching bill now pending before the Senate.

I am definitely opposed to this measure. It is a vicious piece of legislation and wholly unnecessary and undesirable. I speak as an American citizen and not simply as a southerner. North Carolina has gone many years without a lynching. During my administration and that of my predecessor, for many years, every effort has been put forward to protect every citizen of the State, white, Negro, Indian, or foreigner, and no matter how shocking the crime, every resource of the State has been requisitioned to protect and defend the culprit and to see that he was given a fair and impartial trial. The people of North Carolina have always been and still are opposed to this bill. It would be source of irritation, rather than help.

We have fine relationships between the races in this State and every law enforcement officer of the State and every sheriff and official of the counties are in thorough accord with the idea of giving full protection to every citizen and going to the limit to prevent lynchings. Lynchings in the country at large have been reduced more than any other crime. It would seem absurd for the government to undertake to intervene with the States when they are making such definite progress and overcoming this crime with greater success than any other of the more serious crimes.

Trusting that the Senate will see the wisdom of not interfering with a situation that is developing most satisfactorily in the interest of law and order, I am

Very truly yours,

(Signed) CLYDE R. HOEY.

STATE OF SOUTH CAROLINA,
OFFICE OF THE GOVERNOR,
Columbia, February 12, 1940.

HON. KENNETH MCKELLAR,
Chairman, United States Senate, Washington D. C.

MY DEAR SENATOR: Your kind favor under date of February 9, in reference to the Wagner antilynching bill, has been received.

The situation in the South, according to statistics that you cite and as everyone knows, has improved remarkably year by year, and I want to assure you as Governor of South Carolina, and I believe that I speak for law-enforcement officers, that it is their desire to use every means at their command not only to stamp out lynching but to arrest and convict any of those who might be guilty.

As you know, the South, and I might say particularly South Carolina, abhors the thought of Federal interference in States' rights, insofar as police powers are concerned.

It is my opinion that the passage of such a law would do far more harm than good because once the Federal Government assumes responsibility in this field, local officers would not be as alert and would be more inclined to let Washington do it, and, in my opinion, Washington would not be nearly as efficient in the enforcement of these laws as local law-enforcement officers, who know the people of their section.

If any attempt was made, in my opinion, by the Federal Government to try State officials in the Federal courts, there would be a severe reaction.

The law, therefore, might generate hotter racial prejudice than now exists.

Sincerely yours,

(Signed) BURNET R. MAYBANK,
Governor.

TENNESSEE, EXECUTIVE OFFICE,
Nashville, February 15, 1940.

Hon. KENNETH MCKELLAR,
Senator from Tennessee,
Washington, D. C.

DEAR SENATOR MCKELLAR: I have your letter of February 9 relative to H. R. 801, the Wagner antilynching bill, which has come up again.

I want you to know that I am completely in agreement with you, and I am having some statistics compiled as to the enforcement of Tennessee laws against lynching.

If you feel that I should come to Washington to testify, or should send a representative for that purpose, I will make every effort to do so. I am writing Senator Connally and requesting that privilege.

Very sincerely yours,

(Signed) PRENTICE COOPER.

EXECUTIVE DEPARTMENT,
Austin, Tex., February 10, 1940.

Senator KENNETH MCKELLAR,
Washington, D. C.

DEAR SIR: In the absence of Governor O'Daniel from the office I am pleased to acknowledge receipt of your letter of February 9, 1940, addressed to him, together with the enclosures.

Immediately upon the Governor's return to office I will be pleased to call your letter to his attention. I want you to be assured that Governor O'Daniel appreciates your calling his attention to H. R. 801 and that he will be happy to thoroughly consider your letter as well as its enclosures.

Very truly yours,

REUBEN WILLIAMS,
Secretary to the Governor.

COMMONWEALTH OF VIRGINIA, GOVERNOR'S OFFICE,
Richmond, February 12, 1940.

Hon. KENNETH MCKELLAR,
Senate Office Building, Washington, D. C.

MY DEAR SENATOR MCKELLAR: Your favor of the 9th concerning the Wagner antilynching bill has been received.

We have checked up our records in Virginia and we find that we have had only three lynchings in the last 15 years—one in 1925, one in 1926, and one in 1927. There seems to be no reason in the world why the Federal Government should intervene in lynching cases. We take the utmost precautions to prevent

any outbreak of this kind and we have been very successful. Through the efficiency of our State police, we are able to contact the communities promptly when crimes occur, and when arrests are made, the guilty parties are brought to Richmond or to some other central point where these crimes are almost impossible. I think we have made a splendid record in Virginia.

Thank you very much for your letter.

Sincerely yours,

JAMES H. PRICE, *Governor.*

EXECUTIVE DEPARTMENT,
Atlanta, March 12, 1940.

Hon. KENNETH MCKELLAR,
United States Senator, Senate Office Building, Washington, D. C.

DEAR SENATOR MCKELLAR: I regret that circumstances prevented my complying with your request of February 9, 1940, in reference to the Wagner anti-lynching bill. I trust that this reply will not reach you too late to be of service.

So far as Georgia is concerned, I cannot conceive of any argument which could be advanced in favor of the passage of House Resolution 801, which I understand is now before your committee. This State has for years provided by statute for every benefit that might accrue to anyone under the act proposed in Congress. The enforcement of any law, whether State or National, depends largely on the sentiment of the people of the community. I am proud of the fact that this State, for a long number of years, has built public sentiment against lynching. This effort has borne abundant fruit, and lynching is almost a thing unheard of in Georgia. The sheriffs of this State have an enviable record for the prevention of lynchings in this State. I do not recall a single instance where the arresting officer has failed in his duty to protect his prisoners, whether they be white or black. In addition to this, the department of public safety, which was created in 1937, has, in the short time, showed a wonderful record in the prevention of lynchings which might have occurred had it not been for their efficient handling of the situation.

It is refreshing to call attention to some of the instances where the State troopers have, by their prompt and efficient efforts, prevented lynchings. On January 15, 1938, a Negro killed a deputy sheriff at Homerville, Ga. The Negro resisted arrest in the swamp by the State troopers, and at his trial 14 State troopers, at the direction of the Governor, brought the prisoner to the place of trial and attended the trial so that the prisoner would be well guarded, and the result was that there was no disorder at the trial.

On October 18, 1938, a drunk Negro killed a white man and his wife in a remote section of Cobb County, Ga., and severely injured a young boy who was with the aged couple. The county officers captured this Negro and took him to an adjoining county for safekeeping. It was reported that the Negro would be brought back to Cobb County on a certain night, and on this night about 1,500 people gathered in one of the small towns of the county for the purpose of taking the Negro from the officers. The State troopers were called at about 9 o'clock at night and 15 troopers were on the scene by 9:30. They succeeded in dispersing the crowd before midnight without doing any bodily damage to anyone. The following night a still larger crowd of approximately 2,500 men gathered on the highway and stopped all cars, searching for Negroes. Four State troopers who happened to be on patrol in that section successfully escorted several Negro drivers through the mob. One Negro made uncomplimentary remarks while riding through on a truck, and the crowd undertook to beat him up. The troopers succeeded in rescuing the Negro from the crowd and escorted his truck out of the city without any serious injury being done to the Negro. Within an hour's time 20 troopers were in the territory, and 2 hours later 56 troopers in all were on duty. The crowd was successfully dispersed with the use of tear gas shells. In this connection, 13 white citizens were jailed as the result of their disorder.

On February 9, 1939, a 20-year old Negro, 6-feet tall, and particularly strong, attempted to attack a white woman in Franklin County, Ga., and when he was unsuccessful in his efforts, he shot her with a shotgun. He was captured by the sheriff of the county and taken to an adjoining county where the intended victim was lying injured in the hospital, for the purpose of determining whether or not she could identify him. The officer parked under a filling station with his prisoner. A crowd of 1,200 to 1,500 men surrounded the sheriff, and he

telephoned 40 miles away for troopers to assist him. When the troopers arrived, there was considerable agitation among members of the crowd to take the Negro from the automobile. The troopers went into the crowd and talked to members thereof and permitted the Negro to be taken to the woman for the purpose of identification. Taking advantage of this, the Negro was spirited away to a place of safekeeping where he was kept until time for trial. Fifteen State troopers attended the trial at the request of the judge and sheriff. After the trial and conviction of the defendant, the troopers removed him to the State prison without any harm.

On May 22, 1939, a Negro woman was captured by a Negro man on the streets at Monroe, Ga., and dragged some 200 yards and criminally assaulted. Two hours later, on the same night, a Negro knocked on the door of the home of a white family in the same city, shortly after the husband had left the house. When the wife opened the door, the Negro grabbed her and dragged her some 200 or 300 yards back into a field and there criminally assaulted her. State troopers happened to be in the city attending night court and were requested by the sheriff to help in the search for this Negro, and three suspects were arrested. An armed crowd of about 400 people gathered at the jail and began making plans to take the Negroes away from the officers. The two troopers then on duty and the sheriff and his deputy disarmed the members of the crowd who were armed and removed the Negroes to another county for safekeeping. The feeling ran high in the county where this offense occurred. The Negro finally charged confessed to the crime and admitted being involved in other criminal acts in years past. At the request of the judge and sheriff, 53 State troopers were sent to the city of Monroe to maintain order throughout the trial. The Negro was convicted and sentenced to death, and as the troopers started to leave with him for the State prison, a crowd of approximately 2,000 men attempted to close in the safety lines that had been drawn by the troopers. In order to prevent striking and injuring anyone, the troopers used gas grenades, thereby permitting the Negro to be removed safely to prison.

In July 1939, the bodies of a man and woman were found in a woody area near Albany, Ga. Both had been shot to death, and a Negro was captured by the sheriff as a suspect. At the request of the sheriff, a small number of State troopers assisted city and county officers in maintaining order during the trial of this Negro. And, on January 8, 1940, in Newton County, Ga., an aged man and his wife were murdered in their store. Two Negroes were captured by local officers and they confessed to the killing. At the request of the judge and the sheriff, a dozen or more State troopers assisted in maintaining order throughout the trial.

I want to take the opportunity here of stating and emphasizing the fact that in every instance throughout the State where mob violence has been threatened, the sheriffs have, since the creation of the highway patrol, invariably called upon the State patrol for aid in suppressing mob violence.

The instances cited above clearly reveal that Georgia is not only amply able to cope with the lynching situation in Georgia, but has to an enviable degree succeeded in suppressing the crime of lynching. I am firmly convinced that this question can only be solved successfully by the local governmental agencies. I cannot conceive of any Federal agency that could be set up by the Federal Government which would so successfully cope with the situation as it has been proven that we have in Georgia. There is no possible advantage to be gained by the Federal Government attempting to cope with the situation.

With kindest personal regards, I am

Sincerely yours,

E. D. RIVERS, *Governor.*

STATE OF OKLAHOMA, EXECUTIVE CHAMBER,
Oklahoma City, March 14, 1940.

Mr. KENNETH MCKELLAR,
United States Senate, Washington, D. C.

DEAR MR. MCKELLAR: I am very much interested in your letter with reference to the attitude of some persons to passing a bill which would make a State liable in court for the unlawful act of some citizens.

There have been no lynchings in Oklahoma in several years that were based on race prejudice in any particular. All of our law enforcement agencies in Oklahoma have consistently worked against the reoccurrence of this crime. Yet, I cannot see how it is possible of anyone to say that this Federal proposed

antilynching bill is anything other than politics.

The only occurrence which might have led to mob violence in Oklahoma since I have been Governor, was when two Negroes, who were ex-convicts, were discovered as the criminals who killed a man, his wife, and little child and burned their house. In order to prevent any uprising in a community largely filled with W. P. A. workers, I sent a small force of the National Guards to protect the defendants at the time of their trial.

Oklahoma law enforcement agencies believe in the orderly way of conducting all such affairs and it is not necessary for any Federal legislation to be made on the subject.

I would be glad to furnish in detail any information which may be helpful, as I certainly feel that the passage of such a bill as the Wagner antilynching bill would harm rather than help conditions as they exist today.

Yours very truly,

LEON C. PHILLIPS,
Governor of Oklahoma.

STATEMENT OF HON. NAT TIPTON, ASSISTANT ATTORNEY GENERAL OF THE STATE OF TENNESSEE, NASHVILLE, TENN.

Senator MCKELLAR. Now, gentlemen, I want to introduce from my State General Tipton, who is the assistant attorney general of my State and who wishes to make a statement. I regret that I cannot be here, but I have got a conference on the appropriation bill, and I am obliged to go. I thank you very much. You will find General Tipton an excellent and fair witness, and a man who knows what he is talking about.

Senator VAN NUYS. We will be very glad to hear the General. Let me ask you a question or two, General.

Mr. TIPTON. Yes, sir.

Senator VAN NUYS. State your name for the record, please.

Mr. TIPTON. My name is Nat Tipton, my age is 48, and I am assistant attorney general for the State of Tennessee, unofficially in charge of criminal prosecutions in the appellate courts in the State of Tennessee.

Senator VAN NUYS. How long have you occupied that position, General?

Mr. TIPTON. I have been assistant attorney general since July 1, 1928, or approximately almost 12 years.

Senator VAN NUYS. All right; any observations that you care to make?

Senator CONNALLY. Let me interrogate him a little further on his voir dire.

Senator VAN NUYS. All right.

Senator CONNALLY. General Tipton, let me ask you whether or not as a part of your duties as assistant attorney general, that you represent the State before the appellate courts in all prosecutions that come up on appeal?

Mr. TIPTON. I have charge unofficially of representing the State in all criminal prosecutions in the appellate courts of our State, that is the supreme court. Another assistant and myself handle all of the criminal cases, and since this other assistant is comparatively new in the office, so to speak, having been in there less than a year, the entire responsibility of things falls upon me.

Senator CONNALLY. Now, let me ask you: Based on that service over a period of 12 years, state whether or not you are familiar in a general way with the administration of the criminal laws in the State of Tennessee?

Mr. TIPTON. I think I am. I think I am quite familiar with it, because I am personally acquainted with every district attorney in the State, with one exception, and likewise with every circuit judge in the State. And I might say that in Tennessee the circuit judges have criminal jurisdiction except where there is a special criminal court. So that I happen to be personally acquainted with all the presiding judges of these special criminal courts.

Senator CONNALLY. Very well.

Senator VAN NUYS. You may proceed, General.

Mr. TIPTON. I might say that in Tennessee the criminal prosecution, to my way of thinking, if somewhat of an exception to the general clamor that takes place over the country; our appellate courts are all abreast of their dockets, especially in criminal cases. It is very seldom that more than a year elapses between the commission of a crime of any considerable degree and the hearing by the appellate court and the decision in the appellate court.

We are not troubled to a great extent in Tennessee by lynchings, and I attribute it largely to the speed with which criminal prosecutions are carried forward and promptly determined. I know of a number of instances where very atrocious crimes, to my way of thinking, have been committed and where through the orderly processes of the courts those parties have been made to expiate the penalty for their crimes.

May I go into detail somewhat, in some explanation of those?

Senator VAN NUYS. In your own way, General; yes, sir, go right ahead.

Mr. TIPTON. In May or June 1935, if my memory serves me correctly, in Fentress County, Tenn., in the little town of Jamestown in the mountains, there was a homicide committed.

Senator VAN NUYS. A little louder, please.

Mr. TIPTON. Yes, sir. This man who committed the homicide was in the act of being arrested by an officer who had a warrant for his apprehension. He shot this officer and the officer dropped in the middle of the street. A third party, hearing the sound of the shot and hearing this body fall, ran out to see if he could render any assistance to a dying man in his last moments. This man who committed the first homicide ordered him away from the body, and he did not move fast enough, and thereupon he shot him twice. This second man who was killed was an ex-county tax assessor, and a most popular man in the county. That man, the criminal, was arrested immediately, and he was removed to an adjoining county seat. I don't think there was any of the slightest danger of mob violence, but the officers in charge did take him to an adjacent county seat, some 30 or 40 miles away, and he was brought back shortly afterward and tried and convicted and sentenced to the electric chair, and was electrocuted.

That was a situation under which the incentive was present, if I may use that word, to mob violence, because here the fellow that was killed was a very popular ex-county official.

Then, too, in December 1938——

Senator VAN NUYS. Were any of the parties involved colored people, or were they all white?

Mr. TIPTON. They were all white.

Senator VAN NUYS. All white folks?

Mr. TIPTON. My observation has been, Senator, that where there is an atrocious crime committed, the color makes but little difference.

I might say I was prosecuting attorney for about 4 years, back from about 1915 until the latter part of 1918, there in that district in which I resided at that time, and I had an opportunity to observe what I call the elemental passions of the populace generally.

Now, another crime that occurred in Knox County, near the city of Knoxville. An escaped convict from the Tennessee State penitentiary was at large, and there were two couples engaged, parked out on the road, and he attacked them with a pistol and after binding the two men, ravished one of the women; he had some difficulty in determining which one of the two he wished to ravish, but finally he determined to ravish one, and he ravished her in a most horrible and brutal and unnatural way. He was very shortly arrested, and as far as I know there was absolutely no indication or any attempt at any violence threatened.

The third murder with which I am familiar, having handled the transcript of the record upon appeal, was a case where a colored man, who was an escaped convict in the State of Arkansas, crossed the Mississippi River in some manner, and in Shelby County, just south of the city of Memphis on a lonely road he came upon a couple who were engaged to be married and who had parked their car. He was armed with a pistol and after first shooting the man, not fatally, however, he ravished the lady in question. He was later arrested, in Mississippi and brought back to Memphis, and there was no threat whatsoever, so far as I have been able to ascertain, to make him the victim of any mob violence or anything other than the orderly processes of the law.

I might say further that an incident occurred in Bedford County, which is in the vicinity of Nashville but some 50 to 60 miles away, in 1935, where there was a Negro, a colored man, charged with criminal attack upon a very young girl, who was about 7, or probably 9 to 10, but certainly not over 12. The situation grew somewhat tense and the certain judge in charge requested the Governor of the State to send troops for the purpose of protecting him. Those troops were sent, and it developed a feeling so strong that the circuit judge became aware of the fact that this man, this colored man, could not get a fair and impartial trial in that jurisdiction, and of his own motion he granted a change of venue to Davidson County, the capital of the State. The troops were ordered to convey this colored defendant in the case to Nashville for safe keeping, and there was this mob which undertook to take this colored man personally away from these National Guardsmen, and a pitched battle, almost, ensued, and the National Guardsman were armed with shotguns and the mob with pistols. To make a long story short, three or four members of the mob were killed, and the National Guardsmen transported this colored man to Nashville for safekeeping. Later on, they vented their fury upon the courthouse of the town by burning it, but they did not get that defendant because the Government was courageous enough, so to speak, to send these troops and they protected him. I might say that that defendant later on was convicted by due process of law and executed.

Now, unless the Senator has some questions to ask me, I believe that is about my statement.

Senator VAN NUYS. Do you know whether that violent demonstration of the mob was reported by the Tuskegee Institute, or not; or are you familiar with that?

Mr. TIPTON. Senator, I am not; I am not familiar with whether that was reported or not, that violent demonstration.

Senator VAN NUYS. It seemed to me there was something.

Senator CONNALLY. When was that, in 1939?

Mr. TIPTON. In about 1935, Senator Connally.

You were going to say there was something about it?

Senator VAN NUYS. About the number of mobs or listings or violent demonstrations, and I just wondered whether that had been reported, or not?

Mr. TIPTON. I should imagine that it was, by virtue of the fact that a good deal of publicity was given to it. The Governor of Tennessee was commended for his prompt and speedy action, not only by the southern publications, but by the northern ones, as well. You can understand when I mention those geographical sections that I am referring to the Mason and Dixon line, or what is sometimes facetiously referred to as the "Smith and Wesson" line.

Senator VAN NUYS. How long since there has been any lynching in which the victim was killed or maimed or injured in Tennessee?

Mr. TIPTON. There was one in 1938. I am familiar with the details of that to some extent, and my recollection is that that is the only one that has occurred in Tennessee in the last 5 years.

Senator VAN NUYS. Do you remember the circumstances of that?

Mr. TIPTON. Yes, sir. There was a Negro, a colored man—you will pardon me if I use the word "Negro"; I am so much more accustomed to use that term than I am "colored man"—who had killed the town marshal who had undertaken to arrest him for a misdemeanor, and he was being transported from there to another county for safekeeping, to the county seat, for what under our Tennessee procedure is called his preliminary trial.

I might divert a moment now to say that under our criminal procedure that no person can be held to the grand jury until he be given a preliminary examination before a justice of the peace.

He was being transported at night, and two cars, I believe, crowded the sheriff's car in which he was being transported off the road and overpowered him and took him away from the sheriff.

I might say this, too, that I happen to know that a special grand jury was immediately empaneled to make an investigation of this, and likewise the two succeeding grand juries at the regular terms also investigated it. But they were unable to return any indictments against any of the members of the mob.

Senator VAN NUYS. No one was prosecuted as a member of the mob?

Mr. TIPTON. No, sir; because it was at night.

And since this happened in the county in which I formerly lived before coming to Nashville, I tried, through my own way with methods that would not stand up in a court of law, to find out something of the identity, for my own personal knowledge of the members of this mob, and I was unable to do so.

Since this town in which this town marshal lived was located substantially upon the border line between the county in which the lynching occurred and another county of the State of Tennessee, and

since this marshal who was killed was a resident of this other county, the general belief is that the members of the mob were citizens of this adjacent county rather than of the county in which the lynching occurred. And since it occurred at night and since they were disguised, the parties who were present on that occasion were unable to identify any of them.

Senator VAN NUYS. How many in the mob, in that incident?

Mr. TIPTON. In that incident, the best information I can get was there were from 15 to 20.

Senator VAN NUYS. Masked, or not?

Mr. TIPTON. They were, to the extent of having a handkerchief tied just below their eyes.

Senator VAN NUYS. Senator Connally, did you want to ask any questions?

Senator CONNALLY. Yes, please.

Under the facts you have just detailed, as to the mob going from one county to another, coming from another county and doing it in the home county, under this bill the county in which it occurred would be penalized by the assessment of a penalty?

Mr. TIPTON. Yes, sir.

Senator CONNALLY. In a substantial amount, though none of the citizens of that particular county had had anything whatever to do with it?

Mr. TIPTON. Who might have had nothing whatsoever to do with it; that is perfectly true. And, Senator, in that connection I might call to the attention of the committee another incident with which I was familiar, that occurred perhaps in 1922 or 1923. It occurred in Mississippi County, Ark., just directly west of the county in which I was living at that time, being separated by the Mississippi River. That was in 1922 or 1923—my memory does not serve me exactly correct—that a double murder was committed by a member of the colored race. He escaped and he was later apprehended in San Francisco. To avoid mob violence or threatened mob violence, instead of bringing him directly back to Mississippi County, Ark., through the State of Arkansas, the officers in charge of him chose to bring him to New Orleans and then up on the Illinois Central Railroad to the city of Memphis, and then transport him from there to Mississippi County, Ark.

As he was being brought back through the State of Mississippi, a mob, supposedly composed of citizens of the State of Arkansas, invaded the train of the Illinois Central at Batesville, Miss., some 40 or 50 miles south of Memphis and they overpowered the prisoner in another jurisdiction and transported him by automobiles through the State of Mississippi and through a portion of the State of Tennessee and into the State of Arkansas.

Now, as I gather it, under this bill those two States, either one of them, might have been penalized for the act of this mob, this violent mob, so to speak, although they were under no duty to protect this man and could not possibly have expected he would have been present or the mob would have been present on that occasion.

Senator CONNALLY. Well, that illustrates the question that I asked you a moment ago about this other particular case?

Mr. TIPTON. Yes, sir.

Senator CONNALLY. So that under this act, Tennessee might have been penalized and the taxpayers penalized, and another group of

citizens in Arkansas would have been penalized, when they had no criminal agency whatever?

Mr. TIPTON. None whatever; and likewise the State of Mississippi might have been, because it was in that State he was in the custody of the officers.

Senator CONNALLY. General, you say that you recall now that within the past 5 years there has been only one?

Mr. TIPTON. Yes; only one I can recall in Tennessee.

Senator CONNALLY. And from your knowledge of the administration of the criminal laws in the State and your acquaintance with prosecuting officers and judges and sheriffs, I will ask this question, and you need not answer it until Senator Van Nuys has an opportunity to say whether it is allowed: would you not say in your judgment that the law officers and the people of Tennessee are vigilant now and have been in preventing any mob violence, and they stand for administration of the law through the courts?

You have no objection to that question?

Senator VAN NUYS. No.

Mr. TIPTON. In my opinion, they are. I have seen occasions where, when mob violence was threatened, officers would remove the prisoners from the local jail in order to allay any effort at mob violence; in other words, to remove the incentive. I remember upon one occasion when I was district attorney down there, which is our form of prosecuting attorney, a colored man was accused of assaulting a 9-year-old girl in the district in which I was serving. And the sheriff called me and, while there was no threat of mob violence, he and I transported this prisoner to another county, just simply for the purpose of removing any incentive for mob violence. And I think that is the attitude of the sheriffs and other officers over the State of Tennessee, that they do not desire mob violence or lynchings; that they abhor them, and they do everything in their power to prevent them and do everything within their power to remove the possibility of the mob spirit being engendered. And I am perfectly sure that the prosecuting attorneys and the courts are equally as vigilant to prevent anything of that character.

I might say that the prosecuting attorneys in Tennessee, in the main, are men of outstanding ability; and the same goes for the circuit and criminal judges, and that they have the same attitude toward lynching that any other right-thinking citizen has, they abhor it and they believe in the orderly processes of the law and they would do everything possible to prevent it. And I think that, as I said in the beginning there, the fact that our appellate courts are up with their work, and therefore that very seldom is the disposition of a criminal case delayed, has helped wonderfully in holding down any tendency on the part of the populace to take the law into their own hands.

Senator CONNALLY. General, may I ask you this further question: from your experience as a lawyer, practicing on both sides of the docket, and particularly your experience as a prosecuting officer and as assistant attorney general over a period of 10 or 12 years, let me ask you a somewhat hypothetical question: in your judgment, is it or is it not true that where officers have the responsibility direct for the enforcement of the law and the protection of prisoners, whether or not they would be more vigilant and more diligent in performing

their duties than if they felt there was some outside influence taking over their duties, as would in a measure be accomplished by this bill? In other words, would this bill, if enacted into law, have a tendency to increase the vigilance and the desire of officers to perform their functions, or would it have a tendency to decrease that sense of responsibility and sore of side-pass or buck-pass it to the Federal Government?

Mr. TIPTON. My thought is this upon that, Senator: This bill, which I have examined, makes these officers liable where they fail to use reasonable diligence. My thought is that if the responsibility is laid directly upon them, it makes them much more vigilant, and if this bill were enacted into law that they would find some excuse to be elsewhere so that it could not be said that they were not reasonably diligent. My thought is that if they are left to their own devices to protect the prisoners in heir custody from mob violence, that they would carry that out much better under the present circumstances than if the Federal Government were onerated with the duty of outlining every step in that respect.

Senator CONNALLY. In other words, a sheriff could bind, if he so chose, a good many duties somewhere else, and could be very busy on other official duties in some other part of the county, and it would be almost impossible to prove that he was not reasonably diligent, because who could lay the predicates?

Mr. TIPTON. That is my reaction exactly. He would probably always have some process of a civil nature that required his attendance in a remote portion of the county, where he had no idea that there would be any mob violence or anything of that sort. In other words, if this bill were enacted into law, he would make it——

Senator CONNALLY. If he were inclined to do it.

Mr. TIPTON. If he were inclined to do it, he would make it his business to be elsewhere, so it could not be said he did not exercise reasonable diligence.

Senator CONNALLY. In other words, if a sheriff under the present situation would be inclined to do so, in issuing a process he would hold back more under this act; is that your idea?

Mr. TIPTON. Yes, sir; and my idea is that under this he would have greater incentive to be somewhere else than if this proposed act did not become a law.

Senator CONNALLY. He could be very busy away over on the other side of the county on some business requiring him to be elsewhere, could he not?

Mr. TIPTON. That is my thought, exactly; he could get up some sheriff's business elsewhere, as far remote from the scene of the mob as possible.

Senator CONNALLY. Now, let me ask you this other question: The State and its officers, with their sheriff and constables and others that cooperate with them, are much more close to the scenes of possible mob action than any Federal officer would be; are they not?

Mr. TIPTON. Yes, sir; they are much closer there, and they know the ones from whom trouble might be expected and they are able to, if I may use the expression, sort of "smell" mob violence, in a way, and take adequate protection.

On the contrary, unless the Federal Government were to put a constabulary, so to speak, in each political subdivision in the country—

and the cost of that, I imagine, would be alarming; I am not prepared to say what it would be—but they could not know what I call the local section people and the local cost currents, and so forth, to any degree that the local peace officers could.

If you remove from the local peace officers the incentive to protect their prisoners, my thought is you will increase the number of lynchings rather than prevent them, or rather than decrease them at all, because I have seen a number of sheriffs and peace officers in my day and have come in contact with them, for I have been practicing law since 1913 and in quite a varied section of the country there; and my observation of them is that on the whole they regard their oath of office rather strictly and that they are not inclined to throw their prisoners "to the wolves," so to speak, but on the contrary they make an honest effort to protect them under all circumstances.

Senator CONNALLY. This case in which the National Guard killed two or three members of the mob, in what county were they killed?

Mr. TIPTON. That was at Shelbyville in Bedford County, Tenn.

Senator CONNALLY. What part of the State is that?

Mr. TIPTON. In the central part of the State, about 50 to 60 miles southeast of Nashville.

Senator CONNALLY. On the road to Chattanooga?

Mr. TIPTON. No, sir; between the road to Chattanooga and the road to Birmingham.

Senator CONNALLY. I see.

Mr. TIPTON. It is in the bluegrass section of the State. In that instance, it is pretty generally thought that that mob came from an adjoining county.

There have been efforts made to have the legislature of the State of Tennessee appropriate as a gratuity or bounty, compensation to the families of some of those men who were killed, and in, I think, three out of four instances, in which that effort has been made, those men were residents of the adjoining county and not of the county in which the attempted lynching took place.

Senator CONNALLY. Well, if there had been Federal officers there, could they have done any more than to preserve the life of the prisoner, or possibly have killed a few more of the mob?

Mr. TIPTON. They might have; there might have been more killed. Those National Guardsmen were armed with pump guns loaded with buckshot, and the Federal officers are supposed to have machine guns, or they might have. I am not familiar enough with it to say which would have been more fatal, the guns with the buckshot or the machine guns.

Senator CONNALLY. Well, they protected the prisoner and prevented the mob from taking him?

Mr. TIPTON. Yes, sir; and the fact is he was later electrocuted by due process of law in a county some 50 to 60 miles from the scene of his alleged crime, where no possible public sentiments could have interfered with the trial, or could have influenced the result, I mean.

Senator CONNALLY. Is there anything else you care to state, General?

Mr. TIPTON. I believe that is all.

Senator VAN NUYS. I would like to ask the General a few more questions.

Mr. TIPTON. Yes, sir.

Senator VAN NUYS. Now, is it not true that the adjoining county would be per se liable to the survivors of the victim unless it should

be established, first, that the police officers of that county had been negligent or refused to do their duty?

Mr. TIPTON. Well, you have——

Senator VAN NUYS. That is the language of the statute, I mean?

Mr. TIPTON. That is the language of the proposed statute. But the idea is this, as I gather from reading the statute, as I construe it, the fact that a lynching occurs in a county almost—I won't say altogether but almost—prima facie evidence.

Under subsection (c) of paragraph (4) of section 5, it provides:

Of any other circumstance or circumstances from which the prior of fact might reasonably conclude that the governmental subdivision had failed to use all diligence to protect the person or persons abducted or lynched, shall be prima facie evidence of liability.

Now, as I construe that—and, of course, there has been no construction of it by the court of last resort—that would permit a jury to take any circumstances that it so chose upon which to base a finding of liability.

Senator VAN NUYS. Well, General, you will have to say that that is just a rule of evidence back there?

Mr. TIPTON. That is perfectly true, but my criticism of that is, Senator, in my opinion it turns the jury loose; the jury tries the case.

Senator VAN NUYS. Well, now, let us go a little further along the same line: You say that you think the local police officer, the sheriff or whatever it be, might find it convenient to go fishing or be serving some civil writ in a different part of the county, and therefore escape liability. Well, now, he is doing that for political purposes, isn't he? He does not want to lose prestige with the voters of the county.

Mr. TIPTON. Well, I don't know whether it is that, Senator——

Senator VAN NUYS. Well, what other motive could there possibly be for his absenting himself?

Mr. TIPTON. Well, simply this, under this act it provides a personal penalty on him if he fails to exercise reasonable diligence to protect his prisoners.

Senator VAN NUYS. Yes, sir.

Mr. TIPTON. Now, then, I have never seen a mob, but I have talked to a great many who have, and they tell me there is a terrific air of excitement about it, that nobody seems to know what is going on. My thought is this, that if he stands and undertakes to protect his prisoner, when he is personally liable, as he is under this act, which imposes a penalty upon him, that after all it becomes a question whether or not he uses everything that could be used.

I know this, Senator, and I am not undertaking to try to be facetious or anything of that sort, but we can look at any situation of that kind afterward and say what should have been done, at the time it would look like the appropriate thing to do under the circumstances, and in the tenseness of the moment we might have done something else.

Now, then, this man is subject to that penalty, a personal penalty——

Senator VAN NUYS. Well, the thing I am trying to emphasize is this: Take the law as it is today and then take the law as it would be with his proposed resolution, with the personal penalty against him and the civil liability against his county, would not the inducement be greater for him to stay there and do his duty, than to go fishing or serve a writ in some out-of-the-way place?

Mr. TIPTON. Senator, I do not think so, and I will tell you why. I think, as I say, in the mind of the sheriff the personal penalty would be uppermost, and that the liability of the county to pay would be a secondary consideration. While it is probably true he would be a taxpayer, but the amount in the majority of cases he would pay, he would personally have to contribute to this penalty by his taxation, would be only a secondary consideration. He might be fairly willing to pay that, rather than to undertake the reason for his actions in a case brought into controversy in a court in another jurisdiction or in the Federal courts there, where it might be said that he did not do everything he should have done. That is my thought about it.

Senator VAN NUYS. Well, the burden would be pretty much upon him to prove that his official duties called him away just at that time, if the Government could produce evidence that he had knowledge of what was about to happen, would it not? It would not take a very astute prosecutor to develop that condition, would it?

Mr. TIPTON. Well, Senator, my thought is this: In Tennessee—I cannot speak for the other States of the Union, of course, but in Tennessee there is a rather heavy penalty. I might say, in the first place, the sheriff is required to execute a bond for the faithful performance of his duties.

Senator VAN NUYS. Yes.

Mr. TIPTON. And there is a rather heavy penalty upon him for his failure to execute any civil process that is required. And if someone were to place our civil risk of attachment in his hands, there would be but little difficulty, if he was so inclined, by collusion that could not be discovered, to have someone place a writ of that sort in his hands. Now, he is under very heavy penalty if he fails to execute that writ at once, a heavy civil penalty, and my thought is he would get that civil writ and have some property to be attached or to be taken into custody in another part of the county.

Senator VAN NUYS. Well, with evidently as good a lawyer and prosecutor as you are—and I am an old prosecutor myself, and so is Senator Connally——

Senator CONNALLY. I am a young prosecutor; not an old one.

Senator VAN NUYS. I do not think it would be very hard with circumstances of that kind to attempt to show there was an evasion of the law, do you?

Mr. TIPTON. Well, it would depend upon the circumstances there. If a sheriff is so inclined, Senator, and by collaborating with someone willing to help him—and it is a mighty poor sheriff who cannot get such help if he is so inclined—it would be extremely hard, it would be one of those things, Senator, that you and I, as old prosecutors, know was the truth, but when it comes down to the question of proof, we would be up against a stone wall.

Senator VAN NUYS. Now, Senator Connally speaks about the Government's policing. There is no provision in this law for the Federal Government to police the State; that is correct, is it not?

Mr. TIPTON. That is true.

Senator VAN NUYS. The only answer to the Federal Government here is the passage of the law by the Congress fixing a penalty against the governmental subdivision and the particular officer, and then the entrance of the Attorney General of the United States to investigate; is not that right?

Mr. TIPTON. That is correct. Now, let me explain that. I think I was the one that made that statement about the Federal Government policing it. I said that as far as it is effective to prevent mob violence, prevent it in the concrete rather than in the abstract—and by the "concrete" I mean preventing the actual lynching, rather than "locking the door after the horse has been stolen"—I made the statement it would take a terrific force to prevent the lynchings themselves.

Senator VAN NUYS. Well, there is no provision in here for that?

Mr. TIPTON. None whatsoever.

Senator VAN NUYS. That is right. So there is no policing element in this thing?

Mr. TIPTON. Not except this, not except in this way: My personal view is, Senator, that this is sort of an entering wedge of the Federal Government into enforcing the police powers of the State. If I may explain just a little, I can tell my own personal reaction.

Senator VAN NUYS. All along the line we hear every day the intrusion of the Federal Government into States' rights; is that it?

Mr. TIPTON. I would not say that. After all, my thought is, lynching is nothing more than homicide committed pursuant to conspiracy.

Senator CONNALLY. Murder.

Mr. TIPTON. To take the life of someone. It differs from any other conspiracy to take life only as to the motive for the formation of the conspiracy.

Senator NEELY. Well, Mr. Attorney General, doesn't it also differ in the extreme brutality with which the killing is committed, in the case of the lynching?

Mr. TIPTON. Well, Senator, I don't know about that. My thought about that is this, that death in any form is extremely permanent and that one killed under brutal circumstances is just about as dead as one killed by the merciful bullet through the brain.

Senator NEELY. Do you think, then, there is no difference in the criminality of the mob, the tortures of the victim, and so forth, who try to accomplish their purpose of burning the flesh off of him than, say, in the case of a killing in which one is shot instantly?

Mr. TIPTON. Of course, there is a difference in the physical suffering of the victim; there can be no question about that. But, at the same time, the ultimate result is very little different.

Senator NEELY. Well, is not the ultimate result on the community in which a crime of that kind occurs very different, the example of brutality? Doesn't it have—don't you think it has—a bad effect on the people of the community and it has a tendency to brutalize them? You don't need to answer if you don't think so, but I have seen it.

Mr. TIPTON. Private crimes—I will call them ordinarily "private crimes" as distinguished from a public crime—are about as atrocious as any committed by a mob. I have no information on it, but I have read of people being burned by being saturated with some inflammable fluid which is then lit with a match; and I can see no difference in a crime of that sort whether committed by one or any number. The suffering is the same in every instance, or substantially the same.

Senator CONNALLY. Right along that line, the Senator from West Virginia sought to make a distinction between a crime of brutality and other homicide that was fatal. The penalty of the law is the same, is it not, if it is with malice; the jury may assess the death penalty if it sees fit, regardless of the motive?

Mr. TIPTON. It may, if it is committed with malice aforethought. Of course, I am speaking there in Tennessee; in Tennessee we have two degrees of homicide.

Senator CONNALLY. That is right.

Mr. TIPTON. Murder committed with deliberation and premeditation, which is murder in the first degree; and murder committed without deliberation and without malice, which is murder in the second degree.

Senator CONNALLY. You very clearly point out that homicide by a mob, with mob violence, is just murder?

Mr. TIPTON. It is murder committed pursuant to a conspiracy to take the life of the victim, like any other murder, like any murder where it is a conspiracy to take the life of a person that is committed by anyone.

Senator CONNALLY. And, of course, you don't condemn it any more than I do?

Mr. TIPTON. I condemn it as much as anyone else. I condemn lynching; it is not a healthy situation, and all of us deplore it as much as anyone else.

Senator CONNALLY. Now, Senator Van Nuys asked you about the attitude of the sheriff, if they did not want to enforce it, they would not enforce it. But is not this bill predicated; does it not assume that the sheriffs are not going to be diligent and fulfill every duty of the sheriff? And your claim is that if that is his attitude, he can very easily find excuses for not performing his duty. And this law is aimed, not at the diligent officer and not assuming the officer is going to perform his duty, but starts out with the assumption he is not going to perform his duty?

Mr. TIPTON. That is my thought.

Senator CONNALLY. And if you had a case such as this—and you have cases of that kind—in that case you said that he would find some excuse not to be present.

Let me ask you another question: Senator Van Nuys asked you something about how easy it would be to prove his guilty knowledge, the guilty knowledge of the sheriff, if the Government could establish he had knowledge of the mob. How difficult would it be to prove in any given case that the sheriff had knowledge?

Mr. TIPTON. The only way I see that that could be done would be to obtain testimony of some witness who would go directly to the sheriff and inform him of the fact that there was a threat of mob violence or that a mob was being in process of formation or being organized.

Senator CONNALLY. Now, along the line of the question asked by Senator Van Nuys, that the Federl Government would have no police department to see about the enforcement of this law, let me ask you this: If this act should be passed, would not there immediately be aroused a demand for a vast increase in the Federal Bureau of Investigation, for instance, with a flock of investigators in every State of the Union, supposedly for the enforcement of this law?

Mr. TIPTON. I should assume so, and I might say this further, Senator, in my answer, that if this statute be passed and should be upheld by the court of ultimate resort, then there would be nothing whatsoever in the Constitution of the United States to prevent Congress and the Senate of the United Sates from passing a corollary act to put

those investigators, those local police, into every political subdivision in the country for the purpose of enforcing this. And you gentlemen, you Senators who have been here in Washington, are better able than I am to judge of the clamor that would arise for such auxiliary Federal police force.

Senator CONNALLY. And if that should be established in response to these clamors, how long would it be before there would be another clamor that the Federal Government take over the enforcement of some other criminal functions within the States?

Mr. TIPTON. My thought is this: If this bill is enacted into a statute, which opens a wide latitude, the way would be left open for the Federal Government to take over all the criminal laws of the land, if it so desired.

Now, it might be said they would not undertake to enforce the laws against arson or larceny, or any other crime; but at the same time, I might say this, 15 years ago I certainly did not ever dream that the Federal Government would enact statutes designed to limit the people of the United States in their contract relations and their private relations, and that would undertake to tell the agriculturists how much cotton he can raise, and matters of that sort. As I say, I don't think we or one generation hardly knows what legislative demands are going to be made upon Congress and the Senate of the United States by a succeeding generation. And we of the States would like to retain a little bit of our police rights and have something left to us out of the Constitution of the United States besides a mere right to petition our representatives in Congress for redress.

Senator VAN NUYS. Well, now, on that ground of policing, the Attorney General or no Federal authority has any right or power under this proposed statute to make a study at all until after the lynching had been committed?

Mr. TIPTON. That is perfectly true, Senator.

Senator VAN NUYS. Now, where do you get the idea we are going to put a lot of Federal officers in and have them stationed in the 48 States?

Mr. TIPTON. I said this, if this act was enacted into law, I said as a necessary corollary Congress could do it. If you understood me to say they are going to do it, I did not say they are going to do it under this act.

Senator VAN NUYS. Because there is nothing under the act to provide for it.

Mr. TIPTON. Senator, I said that subsequent legislation could do that.

Senator VAN NUYS. I know; but there is nothing in this act that would lead to that conclusion?

Mr. TIPTON. That is perfectly true.

Senator CONNALLY. This act is supposedly based upon the guaranties of the fourteenth amendment. Now, the fourteenth amendment applies to property rights as well as life and liberty, does it not?

Mr. TIPTON. Yes, sir.

Senator CONNALLY. So if it can form a basis for taking over any of the criminal prosecutions affecting life or personal violence, why could it not take over prosecutions for the invasion of property rights?

Mr. TIPTON. My thought is that it could; that the fourteenth amendment guarantees security of property as much as it guarantees security of life, and that if it can be sustained under the fourteenth amendment, that almost every crime that reaches the degree of a felony could likewise be prosecuted federally under the same hypothesis or theory.

Senator CONNALLY. I think that is all, Mr. Chairman, unless you have something else.

Mr. TIPTON. I have nothing more.

Senator VAN NUYS. Senator Neely, anything further?

Senator NEELY. No.

Senator VAN NUYS. That is all.

Senator CONNALLY. General, I want to express appreciation for your testimony. I think you are to be congratulated for the fine temper of your views.

Mr. TIPTON. Thank you, sir. I am trying to give my private views as I see them, which is all any witness can do.

Senator VAN NUYS. We appreciate your attendance. Any other witness?

STATEMENT OF ROBERT BIBB HARDISON, WASHINGTON, D. C.

Senator CONNALLY. Judge Hardison is here, and I would like to say that this is Judge Robert B. Hardison, formerly a resident of Kentucky, but now a resident of the District of Columbia. Just state what positions you have held, Judge?

Mr. HARDISON. I hold my legal residence in Kentucky, but I have practiced law in Washington for 25 years, or such time. I was formerly 4 years special assistant to the Attorney General of the United States, and later I was judge of the police court in the District at one time for 6 years; and since 1923 I have been practicing law here in the District but I have my legal residence in my native State of Kentucky.

Senator VAN NUYS. Now, what part of Kentucky are you from, Judge?

Mr. HARDISON. I was raised about 60 miles from Nashville, Senator, in the southwestern part of the State, in a border county on the border of the State of Tennessee.

Senator VAN NUYS. And how long have you been living in the District of Columbia?

Mr. HARDISON. Well, I began my connection with the Department of Justice in 1913, and I was in and out of here then, and I went on the bench here in 1918, and I have been hereregularly since then?

Senator VAN NUYS. I see. All right; proceed.

Mr. HARDISON. There are so many extraordinary features in this bill that, in order to get a clear understanding of the nature and purpose of it, the objective of it and the consequences of it, I think it is better to take it apart and consider one feature at a time. Now, I know there has been so much said about this bill that I do not want to indulge in any repetitions and go over territory that the committee has had more than enough of, probably, but I have not kept up with the hearings and I have not read them and I do not know.

Senator CONNALLY. Well, Judge, you are at liberty to proceed in your own way. I do not think you will necessarily cover much of the ground that has been covered, because the opponents of this bill have not had any testimony to speak of; it is mostly for the proponents.

Mr. HARDISON. I thank you.

The first feature of this that strikes me is that the caption of this bill, the very caption that is printed in it, shows the objective is beyond the reach of Federal power. Now, this is the caption of the bill: "to assure to persons within the jurisdiction of every State due process of law and equal protection of the laws."

Now, I submit to the committee that it is not a Federal function and the Federal Government and no departments of it have either the duty or the power or authority to assure persons within the jurisdiction of a State due process of law and equal protection of the laws.

Senator, I think I have the pertinent part of the fourteenth amendment here, and I am going to refer to that.

Senator VAN NUYS. That practically follows the wording of the constitution, does it not, the fourteenth amendment?

Mr. HARDISON. No, Mr. Chairman; I do not think it does.

Senator VAN NUYS. As giving Congress the right and power to enact legislation where the due process of law and equal protection of the law is not assured to the citizens of a State?

Mr. HARDISON. No; that is exactly what it does not do.

Senator VAN NUYS. Well, there is some difference of opinion, then, between us.

Mr. HARDISON. Well, let us refer to the wording of it. It is just a matter of construction of the language, and of course I submit my opinion with due deference to your superior opinion.

Senator VAN NUYS. That is all right; very glad to hear you, Judge.

Mr. HARDISON. When the fourteenth amendment was proposed in Congress and was up for consideration, this language was proposed as the enforcement clause of it——

Senator VAN NUYS. I have sent for the constitution, if you want to go to something else while that is coming up.

Mr. HARDISON. I have it here before me now, Senator.

Senator VAN NUYS. All right.

Mr. HARDISON. This I am now about to read was proposed as the enforcement clause when Congress had the fourteenth amendment up for consideration:

> Congress shall have power to make all laws which shall be necessary and proper to secure to the citizens of each State all the privileges and immunities of citizens in the several States, and to all persons in the several States equal protection in the rights of life, liberty, and property.

Now, that was the enforcement clause that was proposed, and Congress should have power to do that; but the Congress would not accept that and it denied that, and this is the fourteenth amendment:

> 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 law.

Now, for the Congress to assure due process of law and equal protection is one thing; that is exactly what the Congress refused to do that passed the resolution, and what it did was to provide that the State

should not deprive any person of due process of law and equal protection. Congress assuring it to them is one thing, and putting a limitation on the power of the State to deprive them of it is something that is wholly different.

The cases, Senator, all draw that distinction. There are a number of cases, beginning way back shortly after the fourteenth amendment was made a part of the Constitution that clearly draw that distinction and, with your indulgence, if you are interested in that, I would later like to refer to them, and some of them are quite lengthy, because it seems to me that is the fundamental vice in this bill. I would like later, if the committee has the time, to refer to some of these decisions, because there is not any doubt in the world that that distinction is there and that shows, as I conceived it, the fundamental vice in this bill. It assumes to do something that the States themselves are obligated to do, instead of doing what the fourteenth amendment permits Congress to do, to prevent a State depriving them of due process of law and equal protection of law; because you can very readily see there is a very wide distinction between the two things.

The enforcement clause, though, of the amendment as it now reads—I was reading the pertinent part of the fourteenth amendment, which is the authority of Congress to act:

> 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 law.

Thus Congress in the fourteenth amendment denied to the State the power or the authority to do any of those things. And this is the enforcement clause that is in the fourteenth amendment:

> The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Now, you will note that that does not give the Congress unlimited power to enforce. In no meaning or sense of the language used is Congress given any power or authority to assure due process of law and equal protection of the law. To forbid and prevent deprivation and denial by the State is one thing; to assure due process and equal protection is something wholly different. And that the Congress so understood and intended is seen in its refusal to adopt the proposed provision for enforcement, the enforcement clause I just read, and did adopt the provisions that—

> the Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Now, appropriate legislation includes something more than effective legislation. It is conceivable that, when you take into consideration the relations of the State to the Nation and of the State government to the Government of the United States, there might be effective legislation that would not be appropriate legislation. Because any legislation that would mar or interfere with or upset the fundamental relations existing between the States and the United States, although it might be very effective and might stop lynching absolutely, even if it should, would have such other consequences that it would not be appropriate legislation.

Senator VAN NUYS. Well, as a former judge, you would say that it is for Congress to determine what legislation is or is not appropriate, is it not? That has been so held by the Supreme Court in a good many cases recently in Wisconsin and Minnesota?

Mr. HARDISON. I should think normally that is true, Senator; but you can conceive that there could be legislation that would be effective and still be unconstitutional because it would transcend the boundary of appropriateness.

Senator VAN NUYS. Oh, yes; I am not arguing that. But Congress having determined that the legislation was appropriate, if I understand the decisions of the highest court, they do not question that fact, but that is a fact to be determined by the Congress itself and is conclusive.

Senator CONNALLY. Is it not true, however, that the appropriateness is limited by the original power conferred, whether the legislation is appropriate necessarily implies it has to be within the compass of the original grant of the fourteenth amendment?

Mr. HARDISON. It undoubtedly must be, and with your kind indulgence, I would like to refer to that a little later on.

Now, the first section of this bill shows another very extraordinary thing, as I construe it: the only constitutional warrant or authority or power that the Congress is assuming to exercise or wield is that found under the fourteenth amendment. Of course it is the will of the Congress that makes the law. And it would seem that that raises a serious question: Can Congress in performing its function to legislate pick the Constitution to pieces, take it apart, dissect it, as it were, detach one provision from the other, and isolate one section or provision, and proceed solely on the authority of it, unqualified, unmodified, and unrelated to all of its coordinate provisions and to the rest of the Constitution?

Is that procedure permitted by the Constitution? It seems to me that of itself raises a grave constitutional question. It has been done in only a few cases, that is not the usual procedure, and it does not seem to me to be constitutionally permissible for Congress to take out one section and isolate it and say, "We are wielding this power here, and exercising this power here and no other in this legislation," because the Constitution is of course an entity, it is a whole, made of component parts, and you cannot isolate and detach one power or part from the influence that all of the rest have upon it, or exercise the power of free from the influence that all the other parts would have upon that particular part or provision or section.

If that procedure is permitted by the Constitution, then it would logically follow that, as this legislation is expressly allocated to the fourteenth amendment, even if warrant might be found for it in other provisions of the Constitution, resort could not be had to those other provisions. Now, it has been advanced here that the much abused and overworked general-welfare clause would furnish some constitutional warrant for this legislation, or that the section that gives the Federal Government power to guarantee a republican form of government to the States would furnish some constitutional warrant or authority for an enactment of this character. But it seems to me that, where the Congress itself said that it is proceeding solely and wholly under the authority of the fourteenth amendment, that its enactment must stand or fall on the delegation of power that the Congress gets from the fourteenth amendment without aid or reinforcement from any of these other sections of the Constitution.

Now, the intent, purpose and nature of the bill are found in the first section, and this is the language of it:

And for the purpose of better assuring by the several States under said amendment equal protection and due process of law to all persons charged with or suspected or convicted of any offense within their jurisdiction.

Now, the meaning and purpose of this bill are exactly the same, and the consequences would be exactly the same, as the meaning and purpose and consequences of the bill that was up in the Congress last year. But this bill is more artfully drawn, quite a bit more artfully drawn than that bill was, because evidently in drawing this bill they tried to avoid the mistakes that had appeared in the other; but the purpose and effect and objective and consequences of this bill are identical with that bill, and we can get a pretty clear view of this bill by noticing some of the features of that bill.

Now, section 6 of the original bill, after announcing that—

the essential purpose of this Act being the furtherance of the protection of the lives and persons of citizens and other persons against unlawful and violent interference with or prevention of the orderly processes of justice, and equal protection and due process of law

continues with these words that are astounding when you sit down and think it through:

And against possible dereliction of duty in this respect by States, or any governmental subdivision thereof.

Now, the language of this bill, in connection with the language used in the preceding bill, shows conclusively that the design of this bill is not that of ordinary congressional legislation, namely, the establishment by the Congress of a rule of action having the usual qualities of Federal law, bearing directly upon citizens of the United States in matters to be administered as Federal law in the Federal courts. But it is clear from that language that the intent is not only to empower the Federal Government and its officers to overlook and scrutinize the administration of justice of the States relating to certain subjects by the officers of the State and correct or prevent any flaw or omission, or punish any failure that such Federal officials may see in such administration by the officials of the State; but it is also to bring the compulsive power of the Federal Government to bear upon the State, its political subdivisions and its officers to prevent dereliction of duty on their part in not measuring up to a standard of integrity and efficiency in administering the justice of the State, as set up by the Federal Government and its officials.

Now, that is to me a startling proposition. We all recognize and proceed on the theory that there is a State sovereignty and a Federal sovereignty, which is a sovereign within a sovereign that is set apart by the Constitution; and for one sovereign, the United States, to overlook and scrutinize and survey the administration of the justice of a State and to punish such officials for failure to discharge their duties and obligations to the State, is a remarkable proposition. I do not recall any other act of Congress that has attempted to do just that to the extent that this act does attempt it.

Now, the administration of the justice of a State is the very essence of the sovereignty of the State, and its sovereignty appears more directly and immediately in the administration of the justice of the State and the laws of the State than it could be made to appear in other form.

Senator CONNALLY. In other words, Judge, whatever duty the State officers owes, he owes it to the State, to the State of Texas, for instance?

Mr. HARDISON. He owes it to the State of Texas; yes.

Senator CONNALLY. As far as the enforcement of the laws and other things. And your idea is that for the Federal Government to come in and judge him as to his conduct and relationship to the State that select and elect him, that is not warranted under the Constitution?

Mr. HARDISON. Absolutely. And furthermore, this bill does not recognize and adopt as its standard the standard that the State itself sets for its officials. And it is a fact, I am sure in some States and probably in all of them, that there is a way laid down and legislation providing laws that govern State officers in protecting prisoners and in taking care of them and avoid these other consequences that this will seeks to avoid. This bill does not adopt the State standard at all, and under this bill it would be possible, not only possible but even probable, that a State officer who obeyed to the letter the law of his State in discharging his duty to protect prisoners, might be taken up and put in a Federal penitentiary because he did not follow the standard which is set down here in this bill by Congress, because the standard in his State was not the standard set down here in this bill. In fact, the only standard that is set here is practically the opinion of the particular jury trying that particular case.

This bill is divided into two main divisions; one, the provision with reference to the criminal liability of the officers of a State, and the other the civil liability of the political subdivision of a State. Now, the provision for criminal liability of officers who offend would extend to all administrative officers having police power, from the Governor down, and to all judges of trial courts and State's attorneys from the attorney general down.

The constitution of my State of Kentucky makes it the duty of the Governor there to see that all the laws are faithfully enforced, and that gives him police power, the courts have held that; and all circuit judges are made conservators of the peace, which gives them police power.

Senator CONNALLY. And they are all magistrates, too, are they not?

Mr. HARDISON. They are all magistrates, too; they all have police powers. And if this bill should be passed and upheld as constitutional, it would be possible for the Governor of the State to be indicted and tried and convicted because he, in the exercise of his discretion as Governor of the State, had refused to send troops somewhere to protect a prisoner that was on trial. It would be possible for the circuit judge who tried the case to be indicted and convicted because he refused to order the transfer of the prisoner to some other jail for safe keeping. It would be possible for the county judge or the sheriff to be convicted because he did not call on the Governor for the militia to protect the prisoner. And it would be possible for the attorney general of the State or for the commonwealth attorney or the county attorney to be convicted, on the theory, he did not use due diligence to apprehend and prosecute the members of the mob.

It seems to me that if this bill should become a statute and be upheld constitutionally, it would just destroy the last vestige, almost, of State's rights and State power. And it would be well, it would

be a situation, almost the same situation as to officers of a State with reference to this as that of a Persian satrap or a Turkish pasha. Perhaps the Governor could not be called to Washington and be bastinadoed or strangled with a bowstring, but he could be indicted and tried and convicted and put in a Federal penitentiary. And it seems to me that this bill goes to an unheard of extent with respect to that provision.

Now, I do not want to bore the committee or trespass on your time, but I would like to call your attention to some of the consequences that might follow upon this feature, imposing liability upon a municipality. Take the little town I was raised in, that probably has a population of 1,000 now, and their tax rate is limited by the State constitution to 75 cents on $100, and the indebtedness that it may incur is limited and is very low, and I do not suppose they would have a yearly revenue to amount to more than two or three thousand dollars, every nickel of which is necessary to keep up the lights and to keep the streets in repair.

But, if a prisoner were taken away from the marshal of that town and lynched, no matter how strenuously the citizens protested against it or how much they felt the humiliation and the disgrace of it, and no matter how diligent the marshal might be, because the matter would rest rather in the discretion of a Federal jury, and the law sets no standard itself by which to determine liability, either criminal or civil, except as the particular jury may view it—and I want to call your attention to that a little later—but that town could be sued and judgment rendered against it, and then the man who was lynched or his next kin would have a case against the State officials who negligently permitted it to be done, they might sue and recover judgment for whatever the State law allowed, which would be some $10,000 for failure of the officer to discharge his duty to the State to protect a prisoner. And the Governor might be sued and the sheriff could be sued on his bond and the marshal on his bond. And after recovery, in addition to that, the party that was lynched or his next of kin could sue the town and recover a judgment for $10,000. And if it did not have the necessary money in the treasury with which to pay, and no property and no money to pay the judgment, if the limit of its liability had been reached, no matter if the limit had been reached under the State constitution and no matter if the limit of its indebtedness had been reached under the State constitution, when judgment in the Federal court was rendered the Federal court could by mandamus compel the trustees of the town to levy at one levy a tax to cover it, no matter how heavy it might be and no matter how far the rate of the levy might run beyond the State constitutional limit of the tax rate, and no matter how heavy the city was in debt, the Federal court could compel at one levy the collection of enough money to pay that judgment. And in some small municipalities the debt is so large, in fact in nearly all they are in debt up to the limit the constitution permits and the tax rate is up to the limit.

And under a bill of this sort with a judgment and recovery of such an amount, any town under the fourth class—and we have towns of the fourth and fifth and sixth class—it would mean practically confiscation of the property of the taxpayers of that town. And this, too, no matter how diligent the citizen might be to prevent the

crime of lynching, and no matter how much he might deplore the disgrace and humility it brought on the town, he could have his property confiscated to pay for something he was in no wise responsible for.

Now, that could as certainly follow, under the decision of the Kentucky courts, as day follows night, because it has been decided there that, where a tort judgment is covered against a municipality, the constitutional limit of the tax rate or the constitutional limit of indebtedness does not apply, and that the judgment can be enforced regardless of the size of the levy. And that would be one of the consequences of this provision for a suit against a municipality.

Now, in this connection, it is rather interesting to note that this idea of subjecting a municipality or political or governmental subdivision of a State to liability for lynching originated in the mind of a pirate. Canute, the Danish pirate king, when he invaded England and settled a lot of his Danish pirates over English territory—occasionally one of them would be killed by the English or maybe by his fellow pirates—and Canute, in order to stop that, started this thing of levying tribute on the shire or county in which one of them lost his life in that manner. It is inherently unjust to impose that liability on people who have nothing in the world to do with a lynching and regret and abhor it. The taxpayers or the ones who happen to have property would be the ones compelled to pay for the fault of some officer, no matter how earnestly they themselves had resisted the efforts of the mob to take the prisoner.

Now, as I suggested a while ago, the power of Congress to enforce the fourteenth amendment is not unlimited, but is limited to appropriate legislation. We can gather considerable light from other sections of the Constitution as to just what is appropriate legislation for the enforcement of the fourteenth amendment.

Paragraph 2 of article VI of the Constitution, which declares the supremacy of the Constitution and valid Federal law, provides how that supremacy shall be enforced. The very next sentence after the declaration of the supremacy of the Constitution and the Federal laws reads:

> And the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

This shows that it is the scheme of the Constitution that the supremacy of the Federal Constitution treaties and valid statutes, where State power and jurisdiction and Federal power and jurisdiction enter into the same field and impinge upon each other, is to be enforced by judicial process in the courts and not in the manner that is attempted here.

This question was decided long, long ago—nearly a hundred years ago. In 24 Howard, page 66, is reported the decision of the court in the case of the Commonwealth of Kentucky against Dennison, Governor. In that case, a crime was committed in Kentucky and the party fled into some other State, Ohio, I believe it was, and the Governor of Kentucky drew a requisition on the Governor of Ohio, which he declined to honor. The case went to the Supreme Court of the United States in a proceeding to compel by mandamus the Ohio Governor to honor that requisition. The Constitution uses most mandatory language with respect to the duty of a Governor to

do that—it is far more mandatory than the fourteenth amendment. Paragraph 2 of section II of article IV of the Constitution reads:

A person charged in any State with treason, felony, or other crime, who shall flee from justice and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

That is the provision of the Constitution making that mandatory, and it says the Governor shall do it. But in that case the court said that the Congress cannot coerce a State officer as such to perform any duty by an act of Congress. The State officer may perform it if he thinks proper and it may be his duty to perform it, but if he refuses, no law of Congress can compel him. The opinion read:

But if the Governor of Ohio refuses to discharge this duty, there is no power delegated to the General Government, either through the judicial department or any other department, to use any coercive means to compel him.

And it was upon that ground that the mandamus was denied.

Now, that is just the question that arises under a bill of this character. This is an effort to compel a State officer to perform a duty that he owes under State law; that case was decided way back yonder.

Senator CONNALLY. What is the style of that case?

Mr. HARDISON. That was in 1860; the Commonwealth of Kentucky against Dennison, Governor, and it is a very illuminating one.

Senator CONNALLY. In 24 Howard?

Mr. HARDISON. Twenty-four Howard, page 66.

Senator CONNALLY. Thank you.

Senator VAN NUYS. Have you just about concluded, Judge?

Mr. HARDISON. Senator, I am sorry to say I have not; but I do not want to detain you any further.

Senator VAN NUYS. Well, we have got some pretty important legislation on the floor and I think we should adjourn at this time.

Senator CONNALLY. Well, Senator, I think one more session in the forenoon will conclude what I have, and including what the Judge may want to finish with, if it is satisfactory to him to come back.

Mr. HARDISON. That suits me, any time that suits your convenience.

Senator CONNALLY. And I can put in what I have then.

Senator VAN NUYS. Well, the committee will rise, then until 10:30 tomorrow morning.

Senator CONNALLY. And you will be here, Judge, to finish your statement.

Senator VAN NUYS. And we will conclude the hearings tomorrow.

(Thereupon, at 12:05 p. m., the subcommittee recessed until tomorrow, Wednesday, March 13, 1940, at 10:30 a. m.)

CRIME OF LYNCHING

WEDNESDAY, MARCH 13, 1940

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

The subcommittee met, pursuant to adjournment, at 10:30 a. m., in the caucus room, Senate Office Building, Senator Frederick Van Nuys (chairman) presiding.

Present: Senators Van Nuys (chairman), Neely, Connally, McCarran, and Wiley.

Senator VAN NUYS. The committee will be in order. You may proceed.

STATEMENT OF ROBERT BIBB HARDISON, WASHINGTON, D. C.—Resumed

Mr. HARDISON. Yesterday, when the committee recessed, I was endeavoring to show that the appropriateness of proposed legislation depends largely upon the effect. The suggestion was made that the appropriateness of legislation rested largely in the discretion of Congress. Ordinarily, that is true; that is, within constitutional limits. It is fundamental, however, that Congress, in order to reach a constitutional objective, cannot resort to unconstitutional means to do that. It was suggested that some decisions of the courts have recently held that the appropriateness of legislation to obtain a constitutional objective rests solely within the judgment and discretion of the Congress.

The inappropriateness of the proposed legislation to enforce the amendment can be demonstrated by contrasting it with legislation that has been enacted for the enforcement of rights under the amendment and that is universally recognized as appropriate for that purpose. If the judge of a State court in the trial of a civil or criminal case makes a decision that operates to deprive any litigant of life, liberty, or property without due process of law, or to deny any such person the equal protection of the laws, his decision, under a Federal statute, may be finally taken to the Supreme Court of the United States and corrected. That statute is appropriate legislation for enforcing the fourteenth amendment. No one has ever thought, although the effect of the State judge's decision might be to deprive a litigant of all his property, or even to put him to death, that a Federal statute authorizing a civil suit for damages or a criminal prosecution for the wrong decision of the judge would be appropriate or constitutional. Yet, if the principle of the antilynching bill is

right, a Federal statute authorizing the judge to be sued or prosecuted would be appropriate. If a State legislature passes a law that in its operation deprives anyone of rights under the fourteenth amendment, the person so injured may under a Federal statute take his case into court and have such law held unconstitutional. That is an appropriate method of prosecuting rights under the amendment, but could it be maintained that a Federal statute authorizing the members of the State legislature, who passed the law, to be sued or prosecuted would be appropriate. If a city council by ordinance establishes rates for a public-service corporation that are confiscatory, the corporation under Federal law can go into a Federal court and have the ordinance adjudged unconstitutional. That procedure is appropriate for the enforcement of the fourteenth amendment, but would a Federal statute authorizing members of the city council to be sued or prosecuted for passing such an ordinance be deemed an appropriate means of protecting rights under the amendment?

Should a State board of valuation and assessment assess for purposes of taxation the property of a corporation, at a higher value than other property in general, such corporation could under Federal law resort to a Federal court and have the action of the assessing board set aside. That procedure would be appropriate for the protection of rights under the amendment, but would a Federal law imposing either a civil or criminal liability upon the board for such erroneous valuation be thought appropriate on either moral or constitutional principles?

Yet the antilynching bill has in it features more inappropriate than would any of the suggested statutes. Such statutes, even if they should be effective to prevent invasions of rights protected by the fourteenth amendment, would operate so harshly and oppressively as to make it dangerous for the officers of a State or governmental subdivision to perform the functions of their offices and discharge the duties they owed to the State.

To correlate the power and authority of the State and Federal Governments and thereby maintain a harmonious relation of the functions of the two are not only within the purview of the Federal Constitution but constitute its basic principle, and this harmony of relation can be attained only when the officials of each Government are free from subservience to the other and responsible for their official actions only to their own.

Now, by comparing the methods of enforcing the fourteenth amendment, I think it will show that this is not appropriate legislation within the meaning of the constitutional provision.

Senator VAN NUYS. Is not that up to Congress? I thought that point was discussed yesterday. It is up to Congress and the Supreme Court to review the findings of Congress on that subject. I think there is a long line of decisions along that line.

Mr. HARDISON. Senator, there are a great many decisions of that general purport, but it is always understood that the means must be within the limits of the Constitution. If you will indulge me upon that a little further, I will then go on to something else. I would like to indicate briefly a comparison of means that have always been regarded as appropriate for the enforcement of the amendment with the measure proposed, showing the inappropriateness of the measure proposed.

What are the rights that the antilynching bill assumes to protect? The bill asserts that they are the rights that are guaranteed in the provisions of the fourteenth amendment. Let us note just what are the rights that the amendment guarantees and see if they are what this bill assumes to protect. The language of the amendment is—

> 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.

Obviously, the right protected is the right of a person not to be deprived of life, liberty, or property, by action of the State, without due process of law; nor be denied the equal protection of the laws, by action of the State. What the antilynching bill seeks to prevent does not constitute a violation of those rights.

The failure of officers to prevent a lynching or to punish the perpetrators is not a "deprivation without due process," nor a "denial of equal protection of the laws," within the meaning of the Constitution. "Due process of law" and "equal protection of the law" are legal concepts with established and definite meanings and connotations, and when those terms were embodied in the Constitution they carried with them and they maintain those definite meanings and connotations.

Congress is without authority or power, by definition, to enlarge or vary the constitutional significance of those terms, and establish any legalistic procedure or occurrence or official action or conduct as constituting a "deprivation" without due process or a "denial" of equal protection that does not inherently come within the established meaning of those terms. If Congress could so enlarge or vary the meaning of terms in the Constitution it would be a rope of sand and the powers of Congress would be without limit. There can be a "deprivation without due process" or a "denial of equal protection" only in the application and operation of the laws. In the constitutional sense the prohibited "deprivation" or "denial" can occur only in the act and manner of application, only in wielding the powers of Government and applying the force of the laws. Deprivation without due process and denial of equal protection, in the constitutional sense, can consist only in the misapplication of law or of the power and authority of Government. They cannot consist in an open defiance and violation of law or in negligent failure of officials to apply it. The notion that, when a mob sets the law at defiance, prevents its application, thwarts its operation, and lynches a person, such lawlessness and the failure of officers to apply the law to prevent and punish constitute a deprivation without due process or a denial of equal protection must be arrived at by some process of twisted reasoning and torture of words.

To arrive at such a conclusion it would be necessary to give to the words "deprive" and "deny," as used in the amendment, meanings different than their ordinary or dictionary meanings. "Deprive," as used in the amendment, has its usual meaning, which is the same as "take." The sense of the amendment is that no State shall take the life, liberty, or property of a person without due process of law, which is something very different than that "no State shall permit a person to be deprived of life, liberty, or property except by due process of law." "Deny," as used in the amendment, has its ordinary or dictionary meaning, which is "to refuse

to believe or admit; contradict; refuse to grant; abjure." The sense of the phrase is that the State shall not refuse to grant to any person the right to the same protection that all others are entitled to. Equal protection of the law means nothing more nor less than "the protection of equal laws," and does not impose upon the State the obligation to furnish complete protection to anyone. To deny equal protection is one thing. To furnish sufficient protection is something very different.

In all of the numerous opinions of the Federal and State courts defining the terms "due process of law" and "equal protection under the laws" in which numerous and various actions and transactions of government and public officials have been reviewed, upon the claim that such actions and transactions constituted a deprivation without due process or a denial of equal protection, no case is to be found in which a lynching has been held to constitute a deprivation without due process or a denial of equal protection. Upon the contrary, there are numerous opinions, the rationale of which is directly to the opposite. Nor do any of the textbooks announce such a principle. Both the cases and the textbooks lay down the principle that deprivation of life, liberty, or property without due process of law, or a denial of equal protection of the laws, in the constitutional sense, can occur only when the power of government is wrongfully applied under the forms of law and through legally prescribed procedure.

The declaration in section 1 of the bill in the last preceding Congress that—

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

would, if enacted, be nothing more or less than a congressional fiat, without constitutional warrant or authority, and would not serve to transmute such nonaction or conduct into a deprivation without due process or denial of equal protection. Congress, pursuant to section 5 of the fourteenth amendment, may provide, by appropriate legislation, how an actual denial of due process or equal protection may be prevented or remedied, or even punished, but it is without constitutional authority or power to declare what acts or conduct due process or equal protection shall consist in, and what conduct or actions of public officials constitute a deprivation or denial thereof.

What the bill proposes is that the Federal Government shall assure "due process" and "equal protection" to persons charged or suspected of crime within the jurisdiction of the State and see that such persons have and receive "due process" and "equal protection"; while the amendment only authorizes Congress, by appropriate legislation, to provide that such persons shall not be deprived of due process or denied equal protection by the State. Obviously, the right protected is the right of a person not to be deprived of life, liberty, or property by action of the State without due process of law, which is something very different than the State protecting a person against being deprived of life, liberty, or property except by due process of law. Equally obvious is it that the right not to be denied the equal

protection of the laws by the States is something very different than that the State shall see that each person actually receives the same protection from the laws.

In the *Civil Rights Cases* (109 U. S. 3) the Supreme Court said:

> It is absurd to affirm that because the rights of life, liberty, and property (which include all civil rights men have) are by the amendment sought to be protected from 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 person of the equal protection of the laws is prohibited by the amendment, therefore Congress may establish laws for their equal protection.

In re Rahrer (140 U. S. 554) the Supreme Court, interpreting the fourteenth amendment, wrote:

> The fourteenth amendment in forbidding a State to make or enforce any law abridging the privileges and immunities of citizens of the United States, or to deprive any person of life, liberty, or property without due process of law, or to deny to any person the equal protections of the laws, did not invest, did not attempt to invest, Congress with power to legislate upon subjects which are within the domain of State legislation.

"Equal protection of the laws" means "the protection of equal laws" and does not mean that the laws shall be so perfectly applied and enforced that each person receives the same protection from them.

That Congress is without power under the fourteenth amendment to assure or furnish equal protection or due process (as the bill assumes to do) is to be seen in the history of the fourteenth amendment as well as in the decisions of the Federal courts.

When the resolution, which, upon its ratification by the States, became the fourteenth amendment, was being considered by Congress, a clause to authorize legislation to enforce it was offered, reading as follows:

> Congress shall have power to make all laws which shall be necessary and proper to secure to the citizens of each State all the privileges and immunities of citizens in the several States, and to all persons in the several States equal protection in the rights of life, liberty, and property.

This clause was rejected, and its rejection shows conclusively that it is not the intent of the amendment to give Congress power to legislate directly on the subject matter of the present bill and guarantee due process and equal protection to persons charged with or suspected of crime within the jurisdiction of the States. The only power granted to Congress in the matter was to enact appropriate legislation to protect the rights of citizens against discriminatory and unjust laws of the States; and it is without power to legislate to protect against lawless acts and individual offenses forbidden by the laws of the States.

And such has been the construction the courts have put upon the fourteenth amendment since the time of its adoption. In the powerful opinion of the Supreme Court of the United States in the *Civil Rights Cases* (109 U. S. 3), the Court went fully into the subject and declared that the Congress has no such power as is assumed by this bill. The Court in that case held, as stated in the syllabus, that—

> The fourteenth amendment is prohibitory upon the States only, and the legislation authorized to be adopted by Congress for enforcing it is not direct legislation on the matters respecting which the States are prohibited from making or enforcing certain laws or doing certain acts, but is corrective legislation, such as may be necessary or proper for counteracting and redressing the effect of such laws or acts.

In the opinion the Court construed the fourteenth amendment and set forth its nature fully. In the opinion it is stated:

It is State action of a particular character that is prohibited. Individual invasion of individual rights is not the subject of the amendment. It has a deeper and broader scope. It nullifies and makes void all State legislation and State action of every kind which impairs the privileges and immunities of citizens of the United States, or which injures them in life, liberty, or property without due process of law, or which denies to any of them the equal protection of the laws. It not only does this, but, in order that the national will, thus declared, may not be a mere brutum fulmen, the last section of the amendment invests Congress with power to enforce it by appropriate legislation. To enforce what? To enforce the prohibition. To adopt appropriate legislation for correcting the effects of such prohibited State laws and State acts, and thus to render them effectual 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 * * *. Positive rights and privileges are undoubtedly secured by the fourteenth amendment; but they are secured by way of prohibition against State laws and State proceedings affecting those rights and privileges, and by power given to Congress to legislate for the purpose of carrying such prohibitions 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 *United States* v. *Cruickshank* (92 U. S. 542); *Virginia* v. *Rives* (100 U. S. 303); and *Ex parte Virginia* (100 U. S. 339) * * *. And so in the present case, until some State law has been passed, or some State action through its officers has been taken, adverse to the rights of citizens sought to be protected by the fourteenth amendment, no legislation of any proceeding under such legislation can be called into activity, for the prohibitions of the amendment are against State laws and acts done under State authority * * *. In fine, the legislation which Congress is authorized to adopt in this behalf is not general legislation upon the rights of citizens, 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 * * *. If this legislation is appropriate for enforcing the prohibitions of the amendment, it is difficult to see where it is to stop * * *. 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 the subject, and not merely power to provide modes of redress against such State legislation or action. The assumption is certainly unsound * * *. Hence, in all those cases where the Constitution seeks to protect the rights of the citizen against discriminative and unjust laws of the State by prohibiting such laws, it is not individual offenses, but abrogation and denial of rights, which it denounces, and for which it clothes the Congress with power to provide a remedy. This abrogation and denial of rights, for which the States alone were or could be responsible, was the great seminal and fundamental wrong which was intended to be remedied. And the remedy to be provided must necessarily be predicated upon that wrong. It must assume that in the cases provided for the evil or wrong actually committed rests upon some State law or State authority for its excuse or perpetration.

This language of the Supreme Court makes it too plain for cavil or controversy that deprivation without due process and denial of equal protection, forbidden by the fourteenth amendment, can occur only in the act and manner of wielding State power and enforcing State laws, and that the failure, either negligently or willfully, or officers of a State to wield the power of the State and enforce its laws, does not constitute a deprivation without due process or a denial of equal protection.

In the case of *United States Mine Workers* v. *Chafin* in the United States District Court for West Virginia, reported in 286 Federal, page 61, was presented the exact question that would be involved in a prosecution under the antilynching bill, viz, whether the negligent or willful failure of State officers to enforce a State statute, protecting rights guaranteed by the fourteenth amendment, would consitute a deprivation of life, liberty, or property without due process of law or a denial of equal protection of the laws. The bill claimed—

That the sheriff of Logan County had entered into a conspiracy with the Logan County Operators Association by which the sheriff appointed a large number of deputies, which deputies were confirmed by the County Court, and were paid by funds donated by the coal operators. It was also averred that the sheriff and these deputies had done many acts and things, the purpose of which was to prevent representatives of the United Mine Workers, and others similarly situated, from coming into or remaining in Logan County, and that such acts on their part were contrary to the provisions of the fourteenth amendment.

The Court, after quoting from the concurring opinion in *Virginia* v. *Rives* (100 U. S., p. 313), continued:

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 * * *. It is not the province of the Federal courts, under the fourteenth amendment, to see that every citizen shall have accorded to him all the privileges which are legally his, as against the acts of every subordinate State or county officer, who prevents him from exercising such privileges in violation of the law. In my opinion, such acts are in no sense the act of the State, and are not, in any way "the State depriving any person of life, liberty, or property, without due process of law; nor is it the State denying to any person within its jurisdiction the equal protection of the laws."

If, as this case holds, the acts of a State or county officer, when actively participating in depriving a person of rights under State laws, are not acts of the State and do not amount to the State depriving a person of life, liberty, or property without due process of law nor a denial of equal protection of the laws, it would seem that much less would the negligent or willful failure of a State or county officer to enforce State laws constitute such a deprivation or denial.

In *U. S.* v. *Harris* (106 U. S., p. 629), and in *Logan* v. *U. S.* (144 U. S., p. 263), the constitutional question that would arise upon an indictment charging a failure of State officers to prevent mob violence was dealt with, and the distinction the Supreme Court drew in those two cases will disclose clearer than could be shown by other means the unconstitutionality of the present bill.

In United States against Harris, the Supreme Court had before it a case in which an indictment, under section 5519 U. S. Revised Statutes, in a Federal court, charged that certain persons composing a mob, in the State of Tennessee, took a prisoner out of the custody of a deputy sheriff, having him under arrest on a charge of violating a State law, and severly injured the prisoner. The indictment charged that Harris and his associates in the mob deprived the persons under arrest, on a State warrant, of their rights to the due and lawful protection of the laws of Tennessee, and of their rights to be protected in their persons from violence while so then and there under arrest. The defendants demurred to the indictment upon the ground that section 5519 U. S. Revised Statutes under which the indictment was returned was unconstitutional. The Supreme Court, in holding that

the demurrer should have been sustained and that the act was unconstitutional, quoted from the opinion of the United States court in *U. S.* v. *Cruickshank* (1 Woods 308), construing the fourteenth amendment, as follows:

> The power of Congress, whether express or implied, to legislate for the enforcement of such a guarantee does not extend to the passage of laws for the suppression of crime within the State. The enforcement of the guarantee does not require or authorize Congress to perform "the duty that the guarantee itself supposes it to be the duty of the State to perform, and which it required the State to perform."

In the *Logan case* the defendants were indicted in a Federal court for assaulting and killing persons in the custody of a deputy United States marshal, on a charge of violating a Federal statute. The Supreme Court drew the distinction between the *Harris case* and the case before it, by showing that, whereas Congress had no power, under the fourteenth amendment, to legislate to protect prisoners in custody of State officers upon a charge of violating State laws, it, upon various grounds, could legislate to protect persons, charged with a violation of Federal law, in the custody of Federal officers. The opinion reads:

> In the case at bar, the right in question does not depend upon any of the amendments to the Constitution, but arises out of the creation and establishment by the Constitution itself of a National Government, paramount and superior within its sphere of action. Any Government which has power to indict, try and punish crime, and to arrest the accused and hold them in safekeeping until trial, must have the power and duty to protect against unlawful interference its prisoners so held, as well as its executive and judicial officers charged with keeping and trying them.

The construction that the courts have put upon the fourteenth amendment from the beginning shows that the fourteenth amendment is a prohibition only against denial of due process and deprivation of equal protection by action of the Satte, and that the failure of officials of a State to prevent or punish a lynching is not State action.

There is no remedy to sue the judge in a civil action or prosecute him in a civil case for violating a constitutional right of a defendant. If the legislature passes a law that operates to deprive a person of his property, then the proper remedy would be to resort to the courts. It is not constitutional or appropriate that the judge might be prosecuted or sued for violating those rights. The same situation would exist if the legislature should fix the rates of a public service corporation so low as to amount to confiscation.

I have covered the point as to what are the rights the antilynching bill assumes to protect.

> The language of the fourteenth amendment is:
> Nor shall any State deprive any person of life, liberty, or property without due proces of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Obviously, the right to be protected, is the right of the person not to be deprived of life, liberty, or property by action of the State without due process of law, and that he may not be denied the equal protection of the law by the action of the State. Not only the courts but the legislative and the executive departments of the Government as well have construed the fourteenth amendment as not authorizing the Federal Government to act to prevent or punish lynching.

In 1880 a mob in Colorado put to death Chinese who were subjects of the Emperor of China. At that time there was in existence a treaty between the United States and China guaranteeing protection to the citizens or subjects of each country while in the territory of the other. In reply to the demand of the Chinese Government for the punishment of the perpetrators of the mob violence, Mr. Evarts, Secretary of State, wrote:

> As to the arrest and punishment of the guilty persons who composed the mob at Denver, I need only to remind you that the powers of direct intervention on the part of this Government are limited by the Constitution of the United States. Under the limitation of that instrument the Government of the Federal Union cannot interfere with regard to the administration or the execution of the municipal laws of a State of the Union, except under circumstances expressly provided for in the Constitution. Such instances are confined to the case of a State whose power is found inadequate to the enforcement of its municipal laws and the maintenance of its sovereign authority; and even then the Federal authority can only be brought into operation in the particular State in respect to a formal request from the proper political authority of the State. It will thus be perceived that so far as the arrest and punishment of the guilty parties may be concerned, it is a matter which, in the present aspect of the case, belongs exclusively to the Government and authorities of the State of Colorado

Such has been the position taken and maintained by Secretaries of State Webster, Sherman, Blaine, Bayard, Olney, and other great Secretaries in administrations representing all the various political parties that have controlled the National Government, with regard to demands for punishment made by various other governments, whose subjects had met with mob violence in the territory of the States of the Union; and in each instance the United States was obligated to afford protection by treaty with the countries whose nationals were lynched.

It is even more certain that the provision in the bill for a civil action for damages against a municipality or other governmental subdivision of a State would offend the Constitution. The States under their own constitutions and the eleventh amendment of the Constitution of the United States are exempt from suits by their own citizens or other persons, except upon such terms and conditions and for such causes of action as the States may allow by their own laws. The eleventh amendment would prevent suit against a State by the United States for the use and benefit of any individual, on a cause of action such as that created in the antilynching bill, and, therefore, the antilynching bill does not attempt to provide for suit against the State itself. However, a governmental subdivision of a State, such as a town, county, or city, is not exempt from suit, under the eleventh amendment of the Constitution of the United States, and such kinds of suits may be brought as are permitted by the Constitution and laws of the State creating them.

Though the eleventh amendment does not prohibit a suit against a governmental subdivision of a State, there are other constitutional inhibitions forbidding a suit, such as is contemplated in the antilynching bill, against a governmental subdivision of a State. A governmental subdivision is, as its name implies, a subdivision of the government of the State; and it is a fundamental principle of law, to be found in many decisions of the Supreme Court of the United States, that a municipality or any governmental subdivision of a State can incur or have imposed upon it no liabilities and obligations and be subjected to no demands, and be held liable upon no causes of action,

and be impleaded in no cases or suits other than such as may be authorized or permitted by the Constitution and laws of the State of which the governmental subdivision is a part. This principle is exemplified in cases in the courts almost without number and is also laid down in all the textbooks.

McQuillan, Municipal Corporations, which is one of the latest and best works on that subject, page 264, volume 1, states the rule as follows:

> The State is regarded as the creator, and the municipal corporation as the creature. It may do what the State authorizes and nothing more. Furthermore, with the years both State and local functions have been greatly multiplied. Contrary to general opinion and to practice largely, it seems that the doctrine of the existence of an inherent right of self-government or home rule does not at present exist, and according to some authorities never did exist in this country * * *. The generally accepted theory, nevertheless, in our system is that the State is the creator and the city or town the creature. Accordingly unlimited legislative control is generally affirmed, except as restricted by Constitution. Judicial expressions are found asserting that the delegation of rights as to local self-government does not alter the relation of municipal corporations to the State, but leaves them as they were before, mere agencies of the State, purely creatures of the legislative will and subject to its control.

And page 303 of the same work reads:

> A city is vitally a political power; it is "an influence from the sovereignty" of the State, governs for the State, and its authorized legislation and local administration of law are legislation and administration by the State through the agency of the city.

And on page 396 the same author, describing a county, wrote:

> They are purely of a political character and their functions are wholly of a public nature. They are organized as subordinate agencies of the State Government for the purpose of exercising some of its functions, and not exclusively for the common benefit of the citizens or property holders within their boundaries * * *. As mentioned all the powers with which the county is entrusted are powers of the State, and the duties with which it is entrusted are duties of the State * * *. The general rule, however, is that it can exercise only such powers as are expressly conferred upon it by law or by necessary implication. Moreover, counties hold their property in subordination to and under control of the legislature. * * * In other words, counties have not the powers of corporations in general. They are merely public quasicorporations, political subdivisions of the State, and act in subordination and as auxiliary to the State government. Thus money acquired by a county from the taxation of its citizens may be appropriated by act of the legislature to pay a portion of the police expenses of a city situated within its limits.

In the *Mayor* v. *Ray* (19 Wall. 475), the United States Supreme Court said:

> A municipal corporation is a subordinate branch of the domestic government of a State. It is instituted for public purposes only; * * *. The legislature invests it with such powers as it deems adequate to the ends to be accomplished. * * * Their powers are prescribed by their charters and those charters provide the means for exercising the powers; and the creation of specified means excludes all others.

If we should leave the decision of the courts out of consideration, it would seem upon principle to follow as inevitable as the night follows the day that if a State cannot be sued, by or for the benefit of a private citizen (and the bill admits that), a governmental subdivision, a creature of the State, that derives its life and being, its power and authority, its purpose and functions from the State, could not be subjected to liability of any kind other than such as its creator, the State, has authorized it to incur or have imposed upon it.

A governmental subdivision of a State is an instrumentality of

government created by the State and clothed with a portion of its sovereign power, in order that it may perform certain governmental functions for the State. Naturally, and inevitably, therefore, such a governmental subdivision can incur no obligation and can have no liability imposed upon it except such as is authorized by its creator. If it were otherwise, the very purpose of the State in creating it and clothing it with a portion of the State's sovereign power could be frustrated and defeated, by the imposition of obligations, liabilities, debts, and penalties unauthorized by the State, and the discharge and satisfaction of which would put it out of the power of such governmental subdivision to perform and do those things that the State had created it for the express purpose of performing and doing.

The functions of municipalities and other governmental subdivisions of a State are of two kinds. One kind is generally described as its proprietary functions, such as the ownership and control of streets, highways, and other municipal property. The second kind is described as its governmental functions. It is a principle of law prevailing in all the States, that, while a municipality may be subjected to liability for the acts of its agents, in performing its proprietary functions, it cannot, except by special provision of State law, be made liable for or be held responsible for the misfeasance, malfeasance, or nonfeasance of its officials in performing any of its governmental functions.

The general rule throughout the States is that, in the absence of some special statute of State, a municipality is not liable for the misfeasance, malfeasance, or nonfeasance of a peace officer in making an arrest or keeping the peace, because in such actions he is engaged in the performance of a governmental function as distinguished from a proprietary function. As we have seen it, it would not be possible, in any event, according to the terms of the fourteenth amendment, to fix criminal liability upon an official (either of the State or a governmental subdivision of it) failing to prevent a lynching, except upon the principle that he was representing the State, wielding the power and authority of the State, and his act, therefore, was the act of the State, and done in the performance of a governmental function of the State and agreeable to its laws.

McQuillan, Municipal Corporations, volume 6, section 2591, states the general rule exempting municipalities from liability for tortious or criminal acts of its officers, as follows:

> Except where otherwise provided by statute, it is well settled that a municipal corporation is not liable for the torts of its policemen, although they are appointed or elected by the city or town, and although the act of the police officer was done in an attempt to enforce a municipal ordinance rather than a statute. So the fact that the incompetence of the offending policeman was known to the municipal authorities is immaterial. A fortioro: A municipality is not liable for the acts of its policemen which are ultra vires and not within the scope of their functions, i. e., for the unlawful acts committed ultra vires, and not colore officii, in the known and willful violation of law.

The case of *Hart* v. *Bridgeport*, No. 6148 Federal Cases, is cited, with others, to support the text. In *Hart* v. *Bridgeport*, although a mob went upon plaintiff's premises, ejected plaintiff, held possession of the premises for 4 days, and then wrecked plaintiff's mill and plant, the municipality was held not liable. In the opinion the court wrote:

> The principal question of law presented by the demurrer is, whether a municipal corporation is liable to an injured party, for the negligence of the mayor

and its public officers, who have sufficient power and ability to preserve the peace and protect property, is not discharging the duty of protecting private property against a known violation of law—

and in holding that the city was not liable the United States Circuit Court for Connecticut stated its views as follows:

It is claimed by the plaintiff that the declaration also alleges a positive trespass, and the actual commission of an unlawful act by the city authorities, for which the corporation is liable as a trespasser. The allegations are, that the defendant, by its officers and agents, protected the persons who were destroying plaintiff's property, and prevented the plaintiff from resisting the destruction of said property, as he might have done had he not been so prevented. It is further alleged that the acts of violence were well known by the defendant to be done without right or claim of right, and in violation of the law. The substance of these averments is, that the mayor and the police officers were cotrespassers, not acting colore officii, but in open and known hostility to the requirements of the law. Assuming that the averments are sufficiently definite to sustain the action, the corporation is not liable for the unlawful acts of its officers, committed ultra vires, and not colore officii, in the known and wilful violation of law.

From these authorities it is apparent that, under the tenth amendment to the Constitution, only by State action could the general rule as to nonliability be changed and a governmental subdivision have imposed upon it liability for the failure of its officers to protect a prisoner from a mob. It, therefore, follows on principle, that the provision in the antilynching bill assuming to impose civil liability upon a municipal corporation or other governmental subdivision of a state for dereliction of duty on the part of its officials, in addition to having the constitutional infirmities and vices, which are to be found in the provision for criminal liability and which come under the ban of the tenth amendment, would also violate the most fundamental principle of the Constitution, viz., that as contemplated in the Constitution the United States is an indissoluble union of indestructible States; that the continued existence and normal functioning of the State governments are indispensable to the continued existence and normal functioning of the Federal Government; and that the Constitution protects equally the rights of the States and the authority of the Union in order that there may be harmony in the relation of States and the Union.

The actual situation that would be brought about by a civil suit and judgment, under such a statute as the bill proposes, against the average Kentucky town or incorporated village is the best possible demonstration of the unconstitutionality of that provision in the bill. Kentucky, in its constitution and statutes, clothes such town or incorporated village with a portion of the State's sovereign power for the purpose of having it perform certain functions of government for the State, and, in order that such municipality may have capacity to perform its functions, the Constitution and statutes limit the obligations that such municipality may incur and the liability which it may have imposed upon it and the kinds of actions in which it may be sued or impleaded. Yet, the antilynching bill, if enacted and upheld, could defeat such an exercise of the State's sovereign power for such a purpose by appropriating to an alien use the property and revenue of the municipality and by putting its officials in the penitentiary.

Since the United States Supreme Court, in *Indian Motocycle Company* v. *United States* (283 U. S. 270), held that a municipality and its instrumentalities and agencies were so far removed from the

reach of Federal power and the interference of Federal law that an act of Congress, laying a tax on the sale of a motorcycle to such municipality, for use in carrying on its government, was unconstitutional, it would seem inconceivable that an act of Congress that would interfere with the operation of a municipal government, to the extent that this provision in the antilynching bill assumes to do, could be constitutional.

If there were no other decisions of the courts directly in point, it would be difficult to see how a United States Senator could support this cockeyed bill.

But there are other opinions of the courts of the United States, of long standing and unquestioned authority, directly on this point.

In *Giamfortone* v. *The City of New Orleans* (61 Fed. 64), a widow, a national of the Kingdom of Italy, brought suit against the city of New Orleans for damages for the death of her husband, also a subject of the King of Italy, who was put to death by a mob in the city of New Orleans.

There was in existence in Louisiana at that time (1) a statute making municipalities liable for destruction of property by a mob; (2) another law of the State providing "every act, whatever, of a man that causes a damage to another obligates him by whose fault it happens to repair it"; (3) a treaty existing between the United States and Italy which guaranteed to Italians in the United States "the most constant protection and security for their persons and property."

Notwithstanding these statutes and the treaty, the circuit court of the United States held that no cause of action lay against the city in favor of the widow of the man killed by a mob while in jail, through the negligence or inefficiency of the police, upon the ground that a municipality is not liable for the negligence of its officers or agents in keeping the peace, in the absence of a State statute explicitly imposing upon the municipality such liability.

And in *The City of New Orleans* v. *Abbaquato* (62 Fed. 240), the same state of facts existed and the same cause of action was stated. The case went to the United States circuit court of appeals, where the court held "in the absence of a statute (a State statute) giving a remedy, a city is not liable for damages for the taking of human life by a mob, although its officers may have been negligent in preserving the public peace."

These decisions hold explicitly that there is no power in the Federal Government or any department of it to impose such a liability upon a governmental subdivision of a State, and that such liability can be imposed by no power other than a law of the State in which a municipality or governmental subdivision is located.

Although these cases were decided over 40 years ago, their authority has never been questioned and they are the constitutional law of the United States today.

The cases hold that the provision of the fourteenth amendment involved here is a prohibition only of State action that would operate as a deprivation of due process or a denial of equal protection; and unless the conduct penalized in the bill amounts to State action as distinguished from the actions of individuals holding office under the State or its governmental subdivisions, such a statute would be invalid, because beyond the reach of Federal power. State action that is forbidden by the fourteenth amendment can consist only in acts done by

an official by virtue of his office. An ultra vires act done by an officer of a State or governmental subdivision, even though it might be done under color of office, could not constitute State action.

The opinions of the Supreme Court in that class of cases where an officer of a State or governmental subdivision was sued for acts alleged to be ultra vires of his official authority and power, and the defense was that the acts constituted action of the State and that the suit was in substance a suit against the State and therefore prohibited by the eleventh amendment, and the Court held that the officers sued were subject to suit, on the ground that State action was not involved, have always been predicated upon the principle that ultra vires acts of State or municipal officers, though under color of office, did not constitute State action.

Senator VAN NUYS. How much more time will you desire? We are going to close these hearings this morning. If you can close in the next 5, 8, or 9 minutes we will appreciate it very much.

Senator CONNALLY. I suggest we run until 11 o'clock.

Senator VAN NUYS. It is the intention of the chairman to go into executive session immediately after the close of the hearing and dispose of this matter then one way or another.

Mr. HARDISON. There is but little more I would like to refer to. I think I can easily get through by 11 o'clock.

Now, I think it is significant that not only the courts in these opinions to which I have referred have settled this question, but the Congress itself has repeatedly passed upon it, and also the executive branch of the Government, deciding that the Federal Government has no authority to interfere with or prevent or punish lynching in the States. I want to advert to that for just a moment. There are some matters in that connection with which I am familiar that perhaps none of you gentlemen are old enough to be familiar with.

Senator VAN NUYS. How old are you?

Mr. HARDISON. Sixty-seven.

Senator VAN NUYS. You are 1 year older than I am.

Mr. HARDISON. I feel younger than I did 40 years ago.

I wanted to refer briefly to some lynching in Louisiana of some nationals of the King of Italy.

Senator VAN NUYS. The Mafia cases?

Mr. HARDISON. Yes.

I think there was also a lynching in Colorado of some Chinese. We had treaties with those governments under which their nationals were guaranteed protection while in our territory. Those governments made claim upon the Federal Government for compensation and damages and that the perpetrators might be punished by the Federal Government. It was discussed at great length by the diplomatic officers of the executive branch of the Government. As was stated before, President Harrison at that time urged upon the Congress the enactment of a statute that would relieve that condition. I am not sure but what I may have referred to this before. I will be very brief.

He urged that Congress should enact a statute to make effective a treaty guaranteeing protection to nationals of foreign governments. President Harrison, who was a great constitutional lawyer, urged upon the Congress the desirability of doing that. At other times I think that same duty was urged upon them.

Congress thought that might interfere with the rights of the States, and Congress refused and always has refused to do that. I

think that is an assertion by Congress that legislation of this sort would be unjustifiable and unconstitutional.

I believe I have referred to the case of the Chinamen in 1880, when Secretary of State Evarts made a statement concerning it which I have heretofore quoted.

I am almost through. I have but very little more.

Senator WILEY. Where are you from?

Mr. HARDISON. Kentucky.

Senator WILEY. Outside of the question of interfering with the constitutional powers of the States, I am wondering, because I am from the North, what the objection is to the Federal Government passing such a law. You southerners apparently feel that it is liable to interfere with your cherished rights. If so, in what way would it interfere?

Mr. HARDISON. Personally, since I have been grown, I have lived in the North more than in Kentucky. I have lived in New York and Washington for 27 or 28 years. My objection to it is not the political effect it would have on the South so much. I feel it would not be especially disastrous in the economic effect. I am a strict constructionist State-rights Democrat. I do not think I am prejudiced about that. I have been on the Federal bench, and served as special assistant to the Attorney General 4 or 5 years. I have had much experience in dealing with Federal law and Federal administration.

Senator WILEY. I understand that. I would like to have you amplify your statement that the passage of this law might have some political effect.

Mr. HARDISON. If this law were put into effect, if this bill were enacted into law, it would have an effect upon every officer of the State, every county officer, every city officer, even policemen. Under the constitution of Kentucky certain duties are imposed upon the Governor, which amount to giving him police power. If this statute were enacted, and some country judge or sheriff should request the Governor to send troops for protection, and the Governor should investigate and act in the best interests of the State, and decide it was an unnecessary expense and would alarm the people of that section to do that, without any good cause or necessity for it. If a person were lynched in that county, the Governor could be prosecuted and put into the Federal penitentiary for exercising his best judgment in that situation.

Not only is that so, but if the judge of a court had a prisoner before him on trial. I live in a little town of 3,500 between Owensboro and Hopkinsville. Suppose the counsel for this defendant should ask to have him sent to Owensboro or Hopkinsville or Louisville for safekeeping and the judge should decide that would be an unwarranted expense, in the exercise of his very best judgment. If that man should be hung by a mob, the judge could be prosecuted in the Federal court and sent to a Federal penitentiary.

Senator VAN NUYS. The question of prosecution in a case of that kind would be up to the Attorney General, would it not? Do you think any Attorney General would recommend such prosecution?

Mr. HARDISON. Suppose we should have another Daugherty as Attorney General, which, God forbid! Suppose a Senator for some State had been very complaisant with the administration of the Fed-

eral Government at that time. Suppose the Governor of the State should decide that he would like to go to the Senate. If there had been a lynching there, prior to which the Governor had been asked to take action, which he decided was not warranted under the circumstances, do you doubt for a minute that Daugherty would send a special agent of the Department of Justice into that State? I have no criticism of the agents of the Department of Justice. I have great respect for them, because I think they are doing a great work. But do you have any doubt that some agent of the Government would be sent to that Governor and suggest to him that he stay out of the race for the Senate? I do not think there is any doubt about it.

Senator VAN NUYS. I would hate to think so.

Senator WILEY. Do you believe this bill, if it became law, would act as a deterrent against lynching?

Mr. HARDISON. That is hard to say.

Senator WILEY. I want your opinion and judgment.

Mr. HARDISON. I hardly think it would act uniformly in all sections. The people of Kentucky, for example, are very strongly imbued with the principle of States' rights. I think that is true of practically all the people there.

Senator WILEY. They are Jeffersonian Democrats instead of New Dealers?

Mr. HARDISON. Exactly.

Senator WILEY. Do you get that distinction?

Mr. HARDISON. Exactly; and I say that with all due respect to the New Dealers.

The people there object seriously to interference with these matters of State concern by the Federal Government.

Senator WILEY. I was wondering if the people of Kentucky and Tennessee would object to the Government putting money in there.

Mr. HARDISON. I think that there has been a good deal of objection.

Senator WILEY. Do you think this bill would not operate as a deterrent?

Mr. HARDISON. I do not say that it would not operate as a deterrent in some respects. I think it might operate as a deterrent and might not; but here is how it might very well operate, and here may be one of the consequences: Suppose you put it in the power of the Attorney General—such power as is set forth in this bill—and some officer who has custody of a person and has the duty of protecting him should find himself unable to do so, and that person should be taken away from him and hung. That officer would be liable to prosecution and imprisonment. The State of Kentucky has a law requiring all officers to afford such protection.

Senator WILEY. Do you mean to say if this law were passed it would have some sort of paralyzing effect upon the ability of officers to enforce the law?

Mr. HARDISON. I do, in this respect to which I just adverted. If an officer proceeds according to State law, and he comes in conflict with a Federal statute, he could be put in prison. It would paralyze him.

Senator WILEY. Your whole argument, I take it, is based upon the theory that this is an interference with the power of a sovereign State by another State, the Federal Government, and that it would have a serious effect upon a State like Kentucky or any other Southern State.

Mr. HARDISON. I do not refer alone to Southern States. It would operate the same way in the other States.

Senator WILEY. Such as Wisconsin?

Mr. HARDISON. It would operate the same way.

Senator WILEY. You feel that it would interfere with State rights in those fields the State had never surrendered to the Federal Government?

Mr. HARDISON. Yes. There are some far-reaching consequences even beyond that. There is one other proposition I would like to refer to for just a minute, and then I am through.

The bill has two main divisions. One is criminal liability of a State or municipal officer, and the other is civil liability of the governmental subdivision. I contend that to impose a civil liability upon a governmental subdivision is entirely unconstitutional, as well as it is unconstitutional to impose a criminal liability upon the officers of such governmental subdivisions. It seems to me it is clear beyond any question of doubt that this provision for civil liability would be unconstitutional.

I am ready to suspend at any time you gentlemen get tired of listening.

Senator VAN NUYS. You will get together with the reporter and arrange for the inclusion in the record of this other matter?

Mr. HARDISON. I will be glad to do so.

Senator VAN NUYS. Then we will proceed with Senator Connally's testimony.

Mr. HARDISON. Thank you.

Senator CONNALLY. Thank you very much, Mr. Hardison, I think you have made a fine argument.

Mr. HARDISON. I thank you, Senator.

Senator CONNALLY. We appreciate your opinion very much.

Mr. HARDISON. I have no personal interest in this other than as a citizen who respects the Constitution of the United States.

Senator VAN NUYS. We appreciate your presence and contribution here.

Senator Connally, you may proceed.

Senator CONNALLY. I want to put some matter in the record. The first is an editorial from Collier's Weekly of February 10, 1940. It is very brief. I think I might read it.

Senator VAN NUYS. Yes.

Senator CONNALLY. It is very brief. It is entitled, "Do We Need an Antilynch Law?" It reads as follows:

It comes out that lynchings in the United States during the year 1939 hit an all-time low—three for the whole Nation, with one of the victims a white man.

The news makes us wonder whether we need the antilynch legislation that bobs up in almost every session of Congress, causes various lawmakers to fight the Civil War all over again with their mouths, and comes fairly close to passing but has never passed yet.

Without such a law lynching has been cut down in this country from a peak of 231 mob murders in 1892 to the three reported last year. The thing has been accomplished by education of public opinion. Press, educators, clergy—all the forces of civic decency—have crusaded against this barbaric custom for 60 years.

Lynching seems to be definitely on the run in this country, though, of course, the total may swing above three this year or next or later.

But until and unless lynchings threaten to go a long way toward that 1892 peak of 231, we'd say it would be wise to keep up the nonpolitical crusading and sidetrack the proposed legislation. A law decreeing some reform should be the last recourse. It's far better to bring about a reform by bringing public opinion around

to favoring it—and civic decency, in the matter of lynching as in all others, is better generated voluntarily inside any community than imposed from outside.

I think that editorial is very pertinent and boils down in a few words the essential objection to this kind of legislation. I would like to have it in the record.

Senator VAN NUYS. It is so ordered.

Senator CONNALLY. I have a communication from the Association of Southern Women for the Prevention of Lynching, enclosing a list of prevented lynchings in 1939. They are carrying on just the kind of campaign that was suggested in the editorial I just read. They do not favor Federal intervention. This is the list of prevented lynchings to which I referred:

PREVENTED LYNCHINGS IN 1939

ALABAMA

January 9, Greensboro, one Negro, accused of murder: Guards augmented.

February 16, Tallassee, Elmore County: Three Negroes were saved from a mob as Mrs. W. A. Austin, sheriff, had her deputies smuggle the prisoners to Montgomery jail. The men were charged with the murder of a white planter.

ARKANSAS

May 5, Pine Bluff, Jefferson County: A 20-year-old Negro, charged with assault and murder of a white woman, was removed to Little Rock for safekeeping. About 3 weeks later the Negro was returned to Pine Bluff for trial, at which time State policemen and National Guardsmen were on duty to maintain order, at the request of the Jefferson County officials. The slayer was given the death penalty. (There were two attempts to lynch this Negro—the second on May 27.)

FLORIDA

August 21, Bradenton: Manatee County officers held a 30-year-old Negro man in an unannounced jail today in connection with an attack on a white woman here Saturday (August 18) night.

GEORGIA

January 4, Royston, Madison County: A 17-year-old Negro boy, charged with shooting and attempting to attack a white woman, was removed to another county by State troopers who were called to Royston to prevent lynching. The Negro was later tried and given 20 years.

April 29, Monroe, Walton County: A Negro man, charged with criminally attacking a white woman, was removed to Atlanta for safekeeping. A mob of about 1,500 persons formed around the courthouse when the Negro was brought back for trial about 3 weeks later. State troopers were present, however, and there was little disorder. The Negro was sentenced to death.

October 8, Louisville: Deputy Sheriff Louis D. Hubbard was killed when he surprised four Negroes running a still. Two were captured and removed to Augusta, Richmond County, for safekeeping. Two Negroes escaped. The man killed was the son of the sheriff who prevented the lynching. Two who escaped were later apprehended and removed.

July 19, Douglas: A 22-year-old white boy, accused of killing his stepmother, was removed to Waycross because as Sheriff Ruilhan explained, "there was a lot of excitement here about the thing."

July 29, Avera: A Negro, accused of murder, was removed for safekeeping.

MISSISSIPPI

February 23, Brandon, Rankin County: A white man, charged with the murder of his wife, was rushed to an unannounced jail in a distant county when a mob, led by the relatives of the dead woman, formed and surrounded the building where the murderer was being tried.

March 6, Carthage, Leake County: Two Negro prisoners, charged with murder, were removed to an unannounced jail when a "good deal of feeling" against the prisoners became evident.

January 20, Louisville, Winston County: Two white farmers, Meredith Hemphill and George Reed, charged with attacking a 14-year-old white girl, were removed to Jackson for safekeeping.

NORTH CAROLINA

October 30, Micro, Johnson County: Sheriff Kirby Rose said today that threats of mob action caused him to place a Negro, identified by him as Zeb Page, 29, in central prison at Raleigh, pending a hearing on charges of criminal assault. Rose said that the Negro, a railroad section hand, confessed to entering a home near here yesterday and assaulting a widow, the mother of three children.

SOUTH CAROLINA

April 18, near Greenville, Greenville County: A 32-year-old Negro farm laborer, charged with attempted assault on a white woman, was removed for safekeeping.

June 18, Greenville, Greenville County: J. McMahan, 30-year-old Negro, was removed from the Fountain Inn jail by officers when a group of 20 or 30 men gathered at the jail. Deputy Sheriff Jones Clement said he was reported to have pointed a gun at a white man. On the trip from Fountain Inn to Greenville the Negro said he did not remember the incident.

TENNESSEE

June 17, Nashville, Davidson County: An 18-year-old boy, race not stated, so evidently white—accused of rape on a small girl near Columbia, removed to Davidson County jail when threats of mob violence were heard.

VIRGINIA

June 5, Chatham, Pittsylvania County: Sam Swanson, Negro, charged with murder, was saved from a mob by Jailer A. E. Edwards:

"The fact that he was saved was due to the cool-headedness and courage of E. A. Edwards, county jailer, who stood off the armed masked mob and talked with them until Sheriff Archer Overby and several hastily gathered citizens could reach the scene of the trouble.

OKLAHOMA

August 21, Durant: White man, accused of murdering his wife, was removed for safekeeping.

Recapitulation [1]	Negroes	White	Recapitulation [1]	Negroes	White
Alabama	4		North Carolina	1	
Arkansas	2		South Carolina	2	
Florida	1		Virginia	1	
Georgia	7	1	Oklahoma		1
Mississippi	2	3			

[1] Case in Tennessee not counted by Tuskegee as race of suspect was not given in newspaper reports.

PREVENTED LYNCHINGS IN 1940

MISSISSIPPI

January 1, Prentiss (A. P.): Sheriff S. C. Magee disclosed today two unsuccessful mob attempts to lynch a Negro suspect in the Monday night slaying of J. C. Sanford, of Prentiss, and said the prisoner had been spirited to an undisclosed jail for safekeeping.

Mr. Magee said Mr. Sanford, contractor and former marshal, was slain by gunfire from an automobile occupied by three Negroes suspected of running liquor.

The Negroes turned their car around and were pursued to Columbia, where Jerome Franklin was arrested and jailed on a murder charge, the sheriff said.

Late Monday night and again Tuesday the mob tried to storm the jail. We finally removed him elsewhere for safekeeping.

The other two Negroes, according to the sheriff, fled to New Orleans. (Commercial Appeal, January 5, 1940.)

January 1, Meadville: National Guardsmen ordered out by Governor White arrived here early tonight in an attempt to prevent what officers feared might be the lynching of a Negro trapped by 200 men in a heavily wooded area near here.

Governor White dispatched five guardsmen, headed by Maj. T. B. Birdson, head of Mississippi's highway patrol, after Deputy Sheriff Graham Herring, of Meadville, urged armed assistance to prevent threatened violence following slaying Monday night of Hillard Hall, a Franklin County deputy, and the wounding of Deputy J. W. Shell and his brother, Constable Phillip Shell. (Commercial Appeal, January 5, 1940.)

Sheriff Magee said today that all lynching threats in Prentiss had been quieted. The Negro Dock Polk, of Prentiss, who was with the party that fatally shot the city marshal, is still at large. Attorney Dale said in a phone message this a. m. that the Jeff Davis citizens decided not to attempt to lynch the Negroes during trial at a mass meeing held in Prentiss. Attorney Dale said Major Birdsong took charge of the mass meeting, and it was through his reasoning with the angry and excited crowd that quiet reigns. These two serious situations demonstrate the real value of the police patrol. (Excerpt from letter to Mrs. Jessie Daniel Ames.)

Senator CONNALLY. I should like to present for the record a letter from Mrs. Jessie Daniel Ames, of the Association of Southern Women for the Prevention of Lynching, with headquarters at Atlanta, Ga.

The newspaper article sets out the facts about the so-called lynchings in 1939, which turned out to be a myth. The letter and clippings are as follows:

Senator TOM CONNALLY,
Senate Office Building, Washington, D. C.

DEAR SENATOR CONNALLY: Yesterday I was rereading Alsop & Catlett's 168 Days. They mentioned so frequently the hearing before the Senate Judiciary Committee on the court-packing plan that I have acquired a desire to have a copy of this hearing if by chance one is available. I think the book will take on a great deal more life, though it doesn't need it, if I can read the two side by side.

The report of the alleged lynching in Georgia for the first part of the year turned out to be a mistake. I am enclosing, for your information and with the expressed hope it will not be used against Tuskegee, the newspaper story of the investigation and the results.

Since the repeal of the embargo section of the Neutrality Act is quite the subject of conversation now, it would be unseemly for me not to close my letter by expressing the wish that the embargo will be repealed, not because of unneutrality so much as inability to give sufficient help to Britain and France.

With every good wish, I am,
Sincerely yours,

JESSIE DANIEL AMES.

[From the Savannah Morning News, Friday, August 4, 1939]

"LYNCHED" NEGRO IS FOUND AT WORK IN LOCAL PLANT—MAN LISTED AS 1939 CASUALTY—MINISTER AND DETECTIVE WORK ON CASE—ON TRAIL FOR WEEKS—TUSKEGEE PUTS MAN AMONG FOUR LYNCHED IN SOUTH—VICTIM MUCH AMUSED—WOMEN'S ORGANIZATION STARTS PROBE OF REPORT

Georgia's undeserved black mark for a 1939 lynching was erased yesterday afternoon when a city detective sergeant and a Methodist preacher located Charlie E. Williams, husky 33-year-old Negro, alive and hard at work at a fertilizer plant here.

"I heard I was lynched but didn't pay any attention to it, 'cause I knew I was living." That was the sage observation of the Negro whom Tuskegee Institute in its semiannual report listed as having been lynched by a group of white men at Woodcliffe, Ga., in Screven County on Saturday night, March 11.

Detective Sergeant E. A. Fitzgerald located Williams working with a gang of other Negroes on a salvage job at the plant of the Reliance Fertilizer Co. on the Louisville Road about 4 o'clock. Along with Rev. J. O. J. Taylor, pastor of Grace Methodist Church, and several others, Sergeant Fitzgerald had been doggedly on the trail of the Negro for some weeks.

Williams was taken to police headquarters, where he was photographed, printed, and questioned, and then speedily returned to his work.

The Negro, powerfully built and tipping the police scale at 190 pounds, seemed much amused at being cast in the role of a lynching victim. "My uncle here told me he read I was lynched," he said.

"You know how colored folks mouth in the country. Well, that just came from somebody's mouth. That's a joke somebody put out, and I don't think they ought to put that kind of stuff out," he related.

Williams said when he first heard the report he knew his mother would be worried and wrote her a letter stating he was alive and working in Savannah.

"White folks have always been my best friends," the Negro said, pointing out how Sheriff Jack Griffin, against whose county the State's lone 1939 lynching was charged, had befriended him on several occasions.

Charlie said he had moved from place to place in recent months in an effort to find work. However, he added, he had worked at a half dozen Savannah business houses and made no effort to conceal his identity.

The Association of Southern Women for the Prevention of Lynching, which was responsible for the investigation, wired Sergeant Fitzgerald:

"In the absence of Mrs. Ames, I wish to express appreciation for your professional help in securing the facts on this case. It is of inestimable value to the association to have thorough investigations on every alleged lynching in the South. Mr. Taylor, with your assistance and that of several other men, has done an outstanding piece of work in this instance. We are deeply grateful."

Tuskegee Institute reported four lynchings in the South during the first 6 months of 1939. In the announcement they were listed by President F. D. Patterson, of Tuskegee, as two in Florida, one in Georgia, and one in Mississippi.

Immediately following this report Mrs. Jessie Daniel Ames, official of the Association of Southern Women for the Prevention of Lynching, wrote the Reverend Mr. Taylor to the effect the scene of the Georgia lynching was placed in Screven County and requested he investigate its accuracy. Thus was launched the long investigation which proved the Georgia lynching a fable.

The erroneous report which was picked up by Tuskegee stated Williams was taken off a train near Ogeechee by a group of white men and lynched on the pretext he had insulted a white woman.

In Tuskegee, M. M. Work, statistician, said the Williams "lynching" was the only one listed for Georgia so far this year. The semiannual report was published July 1, he added.

[From the Savannah Morning News, Friday, July 28, 1939]

LYNCHING SAID TO HAVE HAPPENED IN SCREVEN COUNTY DECLARED A MYTH—THOROUGH AND UNBIASED INVESTIGATION IS PREPONDERANTLY AGAINST ANY SUCH OCCURRENCE—SHERIFF JACK GRIFFIN SAYS IT IS ABSOLUTELY UNTRUE—FIRST STORY OF "LYNCHING" APPEARED IN MARCH IN SAVANNAH JOURNAL—EVENT WAS LISTED IN TUSKEGEE REPORT JULY 4—"VICTIM" OF LYNCHING DECLARED TO BE ALIVE AND WELL

The Morning News publishes herewith all the information it has been able to secure from reliable sources regarding an alleged "lynching" which is said to have taken place in Screven County on Saturday night, March 11, and which has been listed in the record of lynchings sent out by Tuskegee Institute. All of the most reliable information which has come to the Morning News tends to prove conclusively that the person allegedly "lynched" not only was not lynched but is still alive and well.

The sole idea of the investigators here interested in the solution of the matter was to find the truth, and if there were no lynching, then to remove any stigma that may have been recorded against the good people of Screven County. The correspondence which started the agitation to delve into the truth of the matter will be herewith published, and, if after publication, anyone may have recently seen the alleged victim, those interested in the solution will appreciate the information in order to make the record still more reliable.

There were four lynchings reported by Tuskegee Institute in the South during the first 6 months of 1939, an increase over last year this time, when there was but one. In the announcement they were listed by President F. D. Patterson, of Tuskegee, as two in Florida, one in Georgia, and one in Mississippi. This was published in the Morning News of July 4, but no location of the lynchings was given in the Tuskegee report.

The Association of Southern Women for the Prevention of Lynching, of which Mrs. Jessie Daniel Ames, of Atlanta, is executive director, wrote Rev. Mr. J. O. J. Taylor, pastor of Grace Methodist Church here, and a member of the Interracial Committee, that the Tuskegee semiannual report included a "lynching at Woodcliffe, Ga." This is in Screven County.

Sheriff Jack Griffin, of Screven County, talked with yesterday by the Morning News, made this positive statement about the matter:

"There is absolutely no truth in the report. Not one person, white or colored, knows of anybody being found as alleged in a story published by a Negro newspaper in Savannah (Savannah Journal). The story is absolutely untrue. I made an investigation among both white and colored people in Screven County. Not one soul knew anything about a lynching. As a matter of fact, the man, one Charley Williams, was seen alive after the date of the supposed lynching. He left this county, it is true, but his whereabouts was known to his family. I know Charley Williams. His body has never been found, because there was no body to find. His father has told me there was not any truth in the report. The two white men mentioned in the news story published in the Savannah Negro newspaper have told me the story was not true. One of them was the man Williams worked for. He said that Williams was at his house when some men were looking for Williams because of remarks he was reported to have made to a white woman, but the men went away. And when they did, "Red" Brunson, who employed Williams, told Williams to get out of the county, which Williams did. He was not taken off of any train, and everybody here, including his relatives, are convinced Charley Williams is alive and well. Naturally, he is not telling everybody where he is. I don't think it possible for a lynching to happen here and I not know about it. You can state for me that there is not the slightest truth in the report."

The following is the correspondence about the matter:

Letter from the Association of Southern Women for the Prevention of Lynching, dated Atlanta, Ga., July 11, 1939, to Rev. J. O. J. Taylor, Grace Methodist Church, Savannah, Ga.:

"DEAR MR. TAYLOR: When Tuskegee Institute issued its semiannual report a lynching at Woodcliff, Ga., was included.

"The only information on this lynching was carried in Negro newspapers. I do not question the accuracy of the reports, copies of which I am enclosing. I can readily believe that everything as stated is true. However, it is not good policy for us to accept reports of lynchings carried in Negro newspapers, unconfirmed by white persons.

"So, if some time this summer you happen to be going into Screven County, will you try to get some information on this lynching? Possibly you get the Methodist preacher there to do a little scouting. If you make a special trip for this purpose I shall, of course, expect to reimburse you for your personal expenses and for transportation at 3 cents a mile.

"It was a pleasure to meet you down at Macon. I hope that should you be called to Atlanta you will come around to the office.

"With every good wish, I am,

"Sincerely yours,

"JESSIE DANIEL AMES."

Enclosures from Mrs. Ames to Mr. Taylor of published stories in the Savannah Journal, with captions:

"ANOTHER NEGRO IS LYNCHED

"While Congress and the Senate are dickering over the passage of the anti-lynch bill to protect the lives of helpless Negroes in the South, Georgia, bitterly opposed to the measure, defiantly lynches a Negro, and the authorities have not even bothered to ask what his name is.

"Charley Williams was lynched Saturday night, yet not one newspaper heard about it, and this lynching would never have been made public had not the editor of this paper been on a tour of Georgia and accidentally drove to Woodcliff. The point we wish to make here is that it is possible for Negroes to be lynched in these little places and many are, and the country at large not hear about it. But

if there were a Federal law against lynching, and a few whites were sent to prison for the crime, hot-headed whites would not be so eager to take the law in their own hands, and eventually there would be no more lynchings."—Journal, March 12, 1939, Savannah, Ga.

"MOB TAKES CHARLEY WILLIAMS OFF TRAIN NEAR OGEECHEE, LEAVES NOTE ON DEAD MAN'S CHEST

"VICTIM COMMITTED NO CRIME

"WOODCLIFF, GA.—Georgia added another lynching to her gory record on Saturday night when Charley Williams, 28, of Rocky Ford, was taken off the train near Ogeechee by a gang of hoodlums and lynched on the pretext that he had insulted a white woman.

"According to reliable sources, Williams and another colored man named Johnnie Jackson went to the home of the white woman who lived in a tobacco barn near here to buy some whisky. Upon returning to the little town, Jackson is alleged to have told some white men that Williams said some things to the woman which she did not like.

"Red Brinson, white, according to Todd Williams, father of the dead man, headed a group to find Charlie Williams.

"Mr. Williams, who is a W. P. A. worker near Rocky Ford, said he told his son to leave and he thought that Charley was in New York or some other place until informed yesterday that he had been lynched.

"Getting accurate facts in detail was impossible under the circumstances. The Negroes in the little towns and surrounding communities would not say much out of fear nor would they come near enough to be questioned by a stranger.

"However, at Rocky Ford, I interviewed two aunts of the dead man and his father and mother. At the time of the interview the body was lying in the woods near Ogeechee with a note on the chest which gave his name, why he was lynched, and ended by saying he was lynched by parties unknown.

"The aunt claimed that young Williams got on the train at Scarboro and was taken off near Ogeechee; that a Carl Burke, white, of Rocky Ford, told them all about how he was seized, killed, and where the body could be found, and concluded by saying that they were going to lynch some more 'niggers.'

"As far as could be learned, the authorities have not even bothered to go through a routine investigation."—Journal, March 12, 1939, Savannah, Ga.

"SCREVEN COUNTY SHERIFF TELLS JOURNAL HIS OFFICE HAD NOT BEEN INFORMED

"NO ACTION TAKEN

"SYLVANIA, GA.—The lynching of Charley Williams, 28-year old Negro, has not been called to his attention, Jack Griffin,, sheriff of Screven County, told the editor of the Savannah Journal last night.

"After listening to the circumstances surrounding the recent lynching in his own county, during which the editor told him the names of two of the white men who led the mob, the sheriff said he was sorry but he knew nothing about it.

"Williams was lynched on Saturday night by a mob from Woodcliff, Rocky Ford, and surrounding communities for an alleged insult of a white woman who operated a speakeasy at Woodcliff.

"The mob took him from the train at Okeechee and carried him to the woods nearby where a lynching party followed. The body was then left with a note pinned on the chest giving his name and why he was lynched.

"When contacted by the Journal, Todd Williams, father of the lynched victim, told the Journal that the mob was headed by a man named Red Brinson, of Woodcliff. An aunt of the lynch victim said that Carl Burke lives at Rocky Ford.

"Both the colored and white citizens of Woodcliff, Rocky Ford, and Ogeechee have discussed this latest outrage, and just why the sheriff had not been notified has not been learned."—Journal, March 9, 1939, Savannah, Ga.

After the investigation, which was a thorough and unbiased one, Mr. Taylor, on Wednesday, wrote his report to Mrs. Ames, as follows:

"215 WEST PARK AVENUE,
"*Savannah, Ga., July 26, 1939.*

"MRS. JESSIE DANIEL AMES,
"*710 Standard Building, Atlanta, Ga.*

"DEAR MRS. AMES: I am handing you herewith the final report that I shall be able to make in the case of the reported lynching of Charlie Williams, near

Ogeechee, Ga., the report which stated that he was taken off the train there and lynched. There may be some repetition in this report.

"First. The Methodist minister at Rocky Ford, a man whom I have known for years, and whose ability and integrity is 100 percent for such a matter as this, Rev. R. L. Harris, advises me that he has gone very thoroughly into the matter and that there was no lynching. He states that as his positive opinion, and says in his letter that the report was 'absolutely false.' He states that the Negro did say something improper to a white woman there and that he had to leave. Mr. Harris stated that he was informed by reliable Negro people there that Charlie Williams was in Savannah. The Negroes there refused to give him the Savannah address.

"Second. Mr. Fitzgerald, of the Detective Bureau of Savannah, says that he has not been able to locate this Negro in Savannah. If the Negroes at Ogeechee and Rocky Ford advised him that an investigation was being made, he would, of course, have been quite likely to leave or to change his name. It is the deliberate opinion of Mr. Fitzgerald that no lynching occurred, and he believes, as I do, that had such a lynching occurred there would have been some news of it seeping through to his department somewhere. The aid of Mr. Fitzgerald was very valuable to me during this inquiry.

"Third. Mr. Parr, the superintendent of the Central of Georgia Railway, studied the file of this case carefully, and interrogated all of the train crews who would have been at all likely to have passed through Ogeechee on any day even near to March 11, and none of them had ever heard anything of a lynching, and surely none of them knew anything about anyone being taken off a train at any date near that one.

"Fourth. Mr. Richard Charlton, city editor of the Savannah Morning News, stated to me that neither he nor any of the staff had ever had the slightest hint that such a thing occurred. The files of the paper were carefully examined and there was nothing to be found there. He assures me that had such a thing occurred, it would have made the front page, and never would it have been suppressed.

"I regret that neither Mr. Fitzgerald nor myself has been able to locate Charlie Williams and prove beyond a question that he is alive. I do not see anything else that we could have done to make the investigation complete.

"I have contacted a number of people from that immediate area, and not one of them had ever heard of a lynching being perpetrated there.

"Within a few days I will send to you for your files the original letter written to me by Mr. R. L. Harris, pastor of the Methodist Church at Rocky Ford.

"We may rest assured of one thing. The Savannah Morning News will carry a story of this reported lynching and of the investigation here and in the territory near Ogeechee. Now if we should have failed to pick up something, we may all rest assured that there will be no lack of further facts when the matter goes into the Savannah Morning News, if such further facts are really there.

"Permit me to say that I believe that your organization has shown in this case, as in all other cases that I have known, a sense of fairness and thoroughness which is to be commended. It is a real pleasure to me to cooperate with such an organization in the search for the truth about these matters, and if in the future, you need my services, you may call upon me without any hesitation.

"I will continue to keep my ears and eyes open, and if there should come to light any further facts, I will send them in to you. The position now is that we can find no evidence, no one has heard of it, and the reports have not been such that we can believe that this did happen. I repeat that the news story which will be given on Friday will surely bring us more facts if such facts really are there.

"There will be no expense account turned in to your organization for the investigation.

"With best personal wishes, I remain, cordially, J. O. J. Taylor, Pastor Grace Methodist Church, Savannah, Ga."

The Association of Southern Women for the Prevention of Lynching includes the following organizations: Women's Missionary Council, Methodist Episcopal Church, South; National Federation of Temple Sisterhoods; National Council of Jewish Women; Southern Interstate Conference, National Council of Jewish Women; Women's Missionary Union, Southern Baptist Church; Fifty-first Tri-

ennial Convention, Protestant Episcopal Church; Woman's Auxiliary to the National Council of the Province of Sewanee, Protestant Episcopal Church; Executive Board of the Women's Auxiliary, National Council of the Protestant Episcopal Church; Committee on Woman's Work, Presbyterian Church, Southeast Region; Business and Professional Women's Clubs; Disciples of Christ; National Young Women's Christian Association; and the General Federation of Women's Clubs.

Officers of the association are: Mrs. Atwood Martin, Louisville, Ky., chairman; Mrs. W. A. Newell, Morganton, N. C., secretary; Mrs. Jessie Daniel Ames, Atlanta, executive director.

Additional information came to Mr. Taylor yesterday from Rev. R. L. Harris, of Rocky Ford, who made a thorough investigation, that he had been informed by persons in the last few days that they had seen Charlie Williams, though they declined to give his address through natural fear that they might become involved in some way. Sgt. E. A. Fitzgerald, of the Savannah police, who aided in the investigation, was of the opinion that Williams was probably in Savannah up to recently, had most likely changed his name, and, since the agitation of seeking the truth of the matter, might have left Savannah for some other place.

Those in Savannah interested in the investigation believe that the authorities at Tuskegee made the mistake of taking information evidently furnished it with out a verification from other sources. It is likely that the information may have seemed just as believable as it did to the Association of Southern Women, which, in the letter to Mr. Taylor, used this language:

"The only information on this lynching was carried in Negro newspapers. I do not question the accuracy of the reports, copies of which I am enclosing. I can readily believe that everything as stated is true."

However, the investigators said to the Morning News, through Mr. Taylor yesterday, that they were convinced "everything was untrue," and they believed that in justice and fairness to the people of Screven County the record should be set right. Hence the publication of the above information has been thought proper and advisable. It may be stated that Mr. Taylor, before coming to his Savannah pastorate, was engaged in much investigation work. He belongs to an unpaid group of men, unnamed, who have made such investigations in various parts of Georgia to ascertain the truth. Sometimes the investigation has borne out accusations; sometimes it has not. In all cases there was no ax to grind, no unfair criticism to be started, no particular effort made to discredit or to accredit anyone or any circumstance; simply to get to the bottom of the facts and let the people know the truth, which would speak for itself.

In discussing the matter with the Morning News last night, Rev. J. O. J. Taylor stated, as follows:

"I personally know Dr. Patterson, president of Tuskegee Institute, and know him to be a fair-minded man, whose only object is to get at the truth regarding these matters. I am going to take the matter up with him personally, and I feel sure that all corrections will be made.

"I believe that this investigation will have much value in the fact that it will be known that all such rumors as these will be thoroughly investigated by unprejudiced men, and hence there will be more of care on the part of those who send out reports of this nature as to getting at the real facts in the case."

I wish to present a resolution by southern governors. It is not very long. If there are no objections, I will read it:

RESOLUTION

Whereas, we, the members of the Southern Governors' Conference, composed of the States of Alabama, Arkansas, Florida, Georgia, Louisiana, North Carolina, Mississippi, Oklahoma, South Carolina, Tennessee, and Texas, in conference assembled at Fort Lauderdale, Fla., February 27, 1940, take this opportunity to express the pardonable pride we feel in the creditable record of the enforcement of law and order throughout our Southland, and

Whereas, the record achieved by the respective States of the Conference fully refutes the argument and efforts of those who would interfere with our internal affairs: Therefore be it

Resolved, That the Conference go on record as being unanimously opposed to the enactment of the Wagner antilynching bill and any and all such proposed interference by the Federal Government with the enforcement of the criminal laws of our States.

Senator CONNALLY. I want to introduce some telegrams and letters forwarded to me by governors of various States, from sheriffs and other officers of counties, relating to the prevention of lynchings. Here is one from the sheriff at Beaufort, S. C.:

Never a lynching in Beaufort County. No threats in past 10 years. Negro tried for killing officer March court. Kept in local jail for 2 months. No mob sentiment shown.

There was a good deal said the other day by some witnesses about an illegal happening in a county in South Carolina. I want to read a telegram from Spartanburg, S. C., from Sheriff Sam M. Henry. He does not say he is sheriff, but I am sure he is. I would like to read that:

Re wire have not had a single incident where lynching has been intimated, even though we have had some serious cases. I do not anticipate any lynchings in Spartanburg County for the people both white and colored realize that justice can be obtained in our courts. Only a few years ago a jury in this county sent white man up for life for killing Negro man during textile strike and have had numerous cases in recent years where white men have been convicted for killing a Negro. Just before you took office Jerry Babb, Andy Babb, and Bloomer Williams received 20 years each for killing a Negro. At the January 1940 term of court two white men received a sentence of 10 years for assaulting a Negro girl. Our policy is to make quick investigations and obtain speedy trial to insure confidence. We need no antilynching law from Congress, and I believe that if a committee of the proponents of this bill could visit our courts even without our knowing that they are present, that they would let us alone for they would be convinced that the Negro gets the same justice as the white man and in many instances is shown even more consideration. If I can be of further service please let me know.

I would also like to read a telegram from the sheriff of Laurens County, S. C., as follows:

On February 5, 1939, I prevented the lynching of one John C. Humbert, who it was thought had attacked a white woman. I rushed him promptly to another county for safekeeping. He was later tried and convicted of a minor offense. April 18, 1939, I received from the sheriff of Greenville County, for safekeeping, one Charlie Long, who was accused of raping a white woman and who had been rushed here to avoid a lynching. He was protected and was later carried to Greenville County, tried in an orderly fashion, convicted, and given a heavy sentence. Under antilynching bill I would not have received this prisoner nor would the sheriff of the other county have received mine for fear of the consequences if the prisoner had been taken from our custody.

That is signed by C. W. Weir, sheriff of Laurens County.

Here is a telegram from James G. Faucett, sheriff of Union County, S. C.:

Retel., no attempts of mob violence in Union County during my term as sheriff for over 7 years. There was one case of assault with intent to ravish a white woman by a Negro man during the year 1939. This Negro, Lowell Thomas, is now serving a life sentence, his only defense to his act was that he thought it was a Negro woman whom he was attacking. On his arrest he was taken to an adjacent county jail for safekeeping, until he was brought back here shortly before trial.

Mr. HARRISON. May I make just a brief statement?

In the county in which I was raised in Kentucky and lived in until 1905, there was a large sycamore tree that grew on the street leading out to the country. It had a very long limb extending over the street. They hung eight men on that limb, and there never was a Negro on the lot. There has not been a lynching in that county in the past 40 years. That mob spirit has entirely passed away. I

think that shows there is no necessity for any antilynching bill. Public sentiment has killed lynching, anyhow.

Senator CONNALLY. Thank you, Judge.

I have here a statement appearing in the New York Times of December 31, 1935:

LYNCHINGS REDUCED TO 3 FOR WHOLE COUNTRY IN '39—MOB VIOLENCE IN 18 OTHER CASES WAS PREVENTED BY INCREASED PRECAUTIONS, REPORT COMPILED IN SOUTH SAYS

(By George Hatcher)

ATLANTA, December 30.—Only three lynchings, the lowest number since records were begun 58 years ago, occurred in the United States during 1939, it was disclosed today in annual reports of the Commission on Interracial Cooperation in Atlanta and Tuskegee Institute in Alabama.

R. B. Eleazer, educational director of the Commission on Interracial Cooperation, pointed out that the 1939 figures is 96 percent less than the average and 99 percent less than the peak year of 1892, when 231 lynchings were recorded.

"The Nation can well be proud of the progress that his been made in efforts to eradicate the mob-violence evil," Mr. Eleazer said. "While the expansion of law-enforcement agencies in recent years has been a major contributing factor, most of the credit must fall to religious and civic agencies which have crusaded against it."

LYNCHINGS PREVENTED

During 1939 there were reports of 18 instances in which lynchings were prevented. This was accomplished either by the transfer of suspects to secret jails or by the augmenting of guards and "other precautions."

"A total number of 25 persons—5 white men and 20 Negro men—were thus saved from the hands of mobs," the reports state.

Of the persons lynched, two were Negroes and one was white. Two of the lynchings were in Florida and the other one was in Mississippi.

The year's first lynching occurred at Panama City, Fla., on April 1, when Miles W. Brown, a white man was shot to death after being taken from the Bay County Jail by a band of "four or five" masked men. Brown had been convicted of the first-degree murder of a former employer, with a recommendation for mercy, which carries a mandatory sentence of life imprisonment. Brown's jail guards quoted the masked men as expressing resentment that Brown had not received the death penalty, and saying that "the law didn't do justice, but we will."

ANOTHER FLORIDA CASE

The second lynching took place on April 20 near Daytona Beach, Fla. An automobile driven by Lee Snell, Negro taxi driver, struck a bicycle ridden by Benny Blackwelder, 12. Snell was immediately taken into custody by Daytona Beach police and held for county authorities. A few hours afterward, Constable James Durden swore a warrant for Snell, charging him with manslaughter. He took the prisoner in custody and started for Deland, the county seat. When he had got about 4 miles from Daytona Beach, Constable Durden said he was overtaken and passed by an automobile occupied by Everett and Earl Blackwelder, brothers of the boy killed.

According to Constable Durden, the Blackwelders swung their car across the road, blocking it. When Snell got out of the constable's automobile, several shots were fired into his body, the officer stated. The brothers were indicted on a first-degree murder charge but were acquitted.

The third victim of lynching was Joe Rogers, a Negro sawmill worker at Canton, Miss. Rogers allegedly engaged in an altercation with a white foreman of the sawmill. The foreman, according to witnesses, was struck on the head and knocked unconscious. Several days later the Negro's body was found in Pearl River near Canton, bound and badly beaten.

According to Mr. Eleazer, there have been 4,680 recorded lynching in the United States since 1882.

Senator CONNALLY. I also offer to read an article from the Greenville (S. C.) News:

WEAK LYNCH-BILL ARGUMENT

Sponsors of the Federal antilynching bill in the United States were not fortunate in the two Negro witnesses who appeared before the Judiciary Committee Tuesday in behalf of the measure.

Of the Negro Communist and associate editor of the Communist paper, the Daily Worker, Benjamin J. Davis, who appears to have sought an opportunity to be heard chiefly for the purpose of making insulting remarks about the Vice President and various Members of Congress, little needs to be said. There will be general agreement with Senator Van Nuys that his argument for the bill was more of a liability than an asset.

Of a different nature entirely were the arguments of John P. Davis, representing the National Negro Congress, who submitted a prepared statement designed to present a plausible claim that the lynch spirit is rampant and unchecked in South Carolina in the activities of the Ku Klux Klan.

When the committee learns, as it no doubt will, that this statement leaves the absolutely false impression that nothing whatever has been done to curb and punish violations of the law in this State by masked and hooded bands, it will realize that its witness has been very much less than fair in the presentation of his case.

All South Carolinians know that State and local officers strongly backed by emphatic expressions of public opinion in all parts of the State, have acted vigorously to apprehend persons guilty of assaults upon the persons of citizens by hooded bands—whether or not they were members of the Klan is not a matter of exact public knowledge, nor does it matter. Some arrests have been made in connection with a case of that sort at Anderson, and thorough-going investigations have been put under way by State law-enforcement agencies acting under the direct instructions of the Governor with the purpose of bringing to justice all who were directly concerned or indirectly instigated such acts of lawlessness in the State. Among those taken in custody by officers in this connection was a high State official of the Klan, and further developments in the case are expected.

It is a matter of common knowledge in South Carolina that since the arousal of a strongly condemnatory public opinion over such acts of lawlessness and the initiation of vigorous law-enforcement steps, no further such acts have come to public knowledge. Knowing these things, and realizing that both the officers of the State and the citizenship are determined to see that law is enforced in an orderly manner, South Carolinians have reason to resent the false implication that the Klan or any other organization is being permitted to engage in activities of "lynch spirit" characteristics with no effective move to check them.

Senator CONNALLY. Here is a letter from Hon. Paul B. Johnson, Governor of Mississippi, dated February 14, 1940:

Hon. TOM CONNALLY,
United States Senator, Washington, D. C.,

DEAR SENATOR CONNALLY: This letter is written to you in connection with the antilynching bill which is now pending in Congress and to urge its defeat.

Insofar as Mississippi is concerned, I will say never before has there been a better understanding between the whites and the Negroes than exists today. There has been no trouble in this State that would justify the passage of this bill.

We have had a great many crimes committed by the Negroes and many committed by the white people but in every case they have been given a fair and impartial trial and justice meted all alike.

It was my pleasure to have served as district judge for 10 years in a large district of Mississippi and during my tenure of office not one lynching occurred. I do not believe there is one leading Negro in Mississippi that could, or would, say that I am not a fair and impartial officer. They have absolute confidence in me and I believe the passage of the antilynching bill would create a feeling that would prove detrimental to our State, and I believe a great injustice and wrong will be done the Negro if the antilynching bill should become a law.

In the past few years there have been few lynchings in Mississippi and I do not believe there will be any from this time on. I have issued instructions to all officers to see to it that no lynching happens during my administration. As I stated above, during my 10 years as judge, no lynchings occurred and I shall

endeavor to maintain this record during the 4 years that I am to be Governor.

With this record before you, I am sure you can appreciate my views in regard to this bill, and I sincerely trust the committee will make an adverse report on the antilynching bill.

With kindest regards, I remain

Sincerely yours,

———— ————.

Mr. Chairman, I have a matter here, without any personal implication against the witness who appeared some time ago, the minister, Rev. Marmion. This letter is from E. R. Spencer, a lawyer of Columbus, Tex., and I should like to read it into the record. It is dated February 24, 1940, and reads as follows:

Re: Federal antilynching bill and Rev. Gresham Marmion, testimony.

MY DEAR SENATOR: My attention has just been called to an article in the San Antonio Express of February 8, giving a brief account of the appearance of the reverend gentleman above named before the subcommittee hearing.

Since you are the leader of the opposition in the Senate against the unconstitutional and un-American measure which Mr. Marmion has championed, I feel that I may be of some small service to my country by giving you the benefit of certain first-hand knowledge that I have leading to and surrounding the hanging of two young Negro rapists at Columbus, Tex., in 1935, which Mr. Marmion so dramatically described to the subcommittee and audience, with himself occupying the center of the word picture he painted, in the hero's role.

I know Mr. Marmion very well, since, for several years, he was rector of Saint John's Episcopal Church here in Columbus, of which church I was and still am a communicant and vestryman.

My own relations with Mr. Marmion were very pleasant and friendly. As a man and a priest of the church he had, generally, my sincerest approval and admiration. Nevertheless, knowing him intimately as I did, I could not fail to note, that for an able and, in most respects, well-educated man, his knowledge of history, politics, government, and economics, was exceedingly superficial. He seemed to me decidedly deficient in pure love of country, and in his appreciation of native American institutions and traditions. His attitude with regard to government and social problems, somewhere and somehow, had acquired a noticeably Marxist coloring. In a word, he was decidedly radical in his leanings. This tendency, I discounted, as attendant upon youth and something that would be overcome with the passage of years and accumulating wisdom.

At the time of the hanging of the two rapists and immediately after, when public feeling was most intense, expressions of resentment at Mr. Marmion's intervention and attempt to dissuade the mob from his purpose, were remarkably few and met with no encouragement. The people of Columbus merely regarded his protest as the natural reaction of a priest and man of God. They gave him credit for sincerity and courage, though to them, at the time, he seemed singularly unaffected by a natural horror and indignation at the brutal rape by force of a fine young white girl, a recent honor graduate of the local schools, and of unblemished character and standing, followed by her murder and the violation of her dead body by the two Negro brutes, whose richly merited hanging—though without warrant of law—filled his soul and memory with such horror and repulsion, that he was impelled, after the lapse of 4 years, to dig up the memories of a chain of tragedy that a suffering community would fain forget, and in the National Capital, far distant, pillory as an object of scorn and repulsion that community and that people with whom he had once been so intimately identified, and in which and from whom he had been the recipient of naught but friendship and kindness.

Mr. Marmion appears never to have sympathized with or comprehended the intense emotional conflict that agitated the hearts and minds of the people of his community, nor the bitter alternative with which they were confronted.

A crime of unspeakable ferocity and brutal lust had been committed in their midst upon young innocence. The broken body of the poor little victim had just been committed to the grave amid the sorrow and the suppressed, though bitter, anger of an entire community.

Over the intense feeling of the community there was nevertheless preserved for the time being an appearance of calm. The people of Columbus wanted to leave retribution to the law. They wanted no mob violence or lynching. Twice within 2 years they had let the law take its course in cases of crimes of young Negroes under 20 toward white women.

Investigation of the crime was industriously pursued by the sheriff of Colorado County assisted by a Texas ranger, and soon a well connected chain of circumstances pointed a finger of deadly accuracy at two young Negroes, of ages somewhere between 16 and 18 years, but who had attained, physically and mentally, as full a maturity as nature's endowment to them would ever permit.

Under patient questioning, during which they were confronted, after each answer and at every turn, with proven circumstantial facts inescapably placing them at the scene of the crime during the hours of its perpetration, both Negroes made formal written confessions disclosing in detail an almost incredible tale of horror.

The confessions were legally obtained without the use of any questionable methods; would have been admitted in evidence upon trial, and would undoubtedly have sent the criminals to the electric chair had it been possible, under the laws of the State of Texas, for the case to have been duly tried as a felony.

The public soon learned, however, that the rapist-murderers could not be so tried, for relatives stood ready to file their oaths that the defendants were under the age of 17 years, and, whether true or not, the State had no means of successfully refuting such affidavits. Therefore, under the laws of the State of Texas, the brutal rapist-murderers were nothing more than juvenile delinquents, could only be tried as such in the juvenile courts, and could, in no event, have adjudged against them a greater penalty than confinement in a State training school for Negro juveniles until they had attained the age of 21 years, and would then be free to gloat over their accomplishment, hopefully looking forward to an opportunity for its repetition. * * *

* * * * * * *

You have my permission, Senator, to make any use of this letter, that you may see fit, in your opposition to the Federal antilynching bill pending in the Senate.

Senator CONNALLY. I have here a statement headed "N. A. A. C. P. fires opening gun in Nation-wide drive for antilynching bill." It reads as follows:

NEW YORK, December 9.—A concerted drive to get every United States Senator to commit himself to limitation of debate (cloture) if the need arises, when the antilynching bill comes up for a vote in the new Congress, was launched this week by the National Association for the Advancement of Colored People.

Plans for opening the drive were contained in a three-page letter sent out today to the association's 400 branches and to more than a score of cooperating organizations.

Attached to the letter was a complete record of the vote, or commitment on cloture of all Senators, as of December 6.

The campaign calls for the immediate organization of delegations in every city, headed by the local branch of the N. A. A. C. P. The delegations will include representatives of all organizations interested in the fight to pass a Federal antilynching bill. The delegations are scheduled to call upon Senators before the opening of Congress and get definite commitments on the solons' attitude toward cloture.

This marks the first step in the association's program of fighting for passage of a slightly redrafted antilynching bill which will be introduced in the House and Senate when Congress opens in January.

Senator CONNALLY. I also wish to read into the record a telegram from the Governor and Attorney General of Mississippi, dated March 11, 1940:

Regret we cannot appear personally before committee but desire to protest enactment of antilynching bill. There is evidently no reason for the law in this State. Our peace officers and other officers are vigilant and the people generally have an increasing abhorrence of lynch law. Peace officers have fully demonstrated their ability and determination to prevent lynchings in this State. The

passage of such a law by Congress at this time would make no contribution to the growing sentiment of our people against this evil. No lynching in Mississippi this year. Possibly one of undetermined facts in 1939 the passage of such a law not under these conditions would be a mistake. We sincerely hope the bill is unfavorably reported.

I want to call attention to some of this correspondence, which I shall not introduce into the record, which indicates that some of the stories about lynchings were not true.

Reference is made in one of them to a colored man named Charles Williams, who had been reported as having been lynched, but he was later discovered and so it developed that he had not been lynched at all. (See p. 435 A.)

I have here a letter which, perhaps, as a matter of fairness, I should include in the record, signed by a couple of Communists and addressed to all the members of the committee. It reads as follows. It is dated Washington, D. C., March 4, 1940.

Senators FREDERICK VAN NUYS,
PAT MCCARRAN,
ALEXANDER WILEY,
WARREN R. AUSTIN,
MATTHEW M. NEELY, and
TOM CONNALLY.

GENTLEMEN: On February 6, 1939, Earl Browder, general secretary of the Communist Party, wired Senator Frederick Van Nuys, chairman of the Judiciary Subcommittee which is holding hearings on the antilynching bill, requesting that the undersigned be permitted to testify before the subcommittee as representatives of the Communist Party in defense of the bill. Senator Van Nuys did not see fit to answer this telegram.

On February 12, 1939, Mr. Browder sent a second telegram to Senator Van Nuys similar to the first, repeating the request. This request was similarly ignored.

In view of the fact that hearings on the bill are reported to end this week, we respectfully insist that the point of view of the Communist Party be heard by the subcommittee. To deny us the repeated request to testify is an abridgement of free speech. As representatives of the Communist Party, we testify for an organization which has long been in the forefront of the fight for antilynching legislation. We believe that the Communist Party is the only political organization which points to the real social and economic causes of lynching, segregation, discrimination, and other forms of persecution of the Negro people and has a perfect right to be heard.

The only issue facing the subcommittee, in our opinion, is whether it will accord a hearing to a legally constituted American political party despite the personal prejudices of some members of the subcommittee. We believe it to be fundamental to the democratic functioning of government that differing points of view be presented before congressional committees. We know that the Judiciary Committee of the Senate has followed this practice in the past, even to the extent of permitting notorious antisemitic propagandists to testify. We do not believe that the members of the Judiciary subcommittee would want to take the position to accord a hearing to persons who express violent racial prejudices and then to deny a hearing to the Communist Party which is unequivocally opposed to all forms of racial prejudice and discrimination.

Consequently, we expect to be accorded the right to testify before the Judiciary subcommittee March 5.

Very truly yours,

PAT TOOHEY,
Member National Committee, Communist Party, U. S. A.
BENJ. DAVIS, JR.,
Associate Editor, the Daily Worker.

Senator CONNALLY. I have here a couple of rather peculiar letters, which appear to be duplicates. They are dated at New York City,

February 24 and March 11, 1940. One is signed by Miss Jonathan Faithful and the other by Radical Love. I will read the last one:

Senator TOM CONNALLY,
United States Senate, Washington, D. C.

HONORED SIR: As an American citizen, a follower of Father Divine, and one deeply interested in the preservation of democracy as enacted under our United States Constitution and its amendments, I am asking you to take steps to remedy an evil practice which is definitely undermining our democracy.

I refer to the practice of filibustering. I feel, as do most of my friends, that it is an unjust, a dishonest, and an undermining act, when a bill has passed either branch of the Congress by a majority vote, for men elected to office in the other branch and sworn to support the Constitution, to stand up and stop the processes of democracy by preventing that which is constitutional—a majority vote.

As Father Divine has declared, it is an attempt to pervert justice in the very place where the law of our Government is made. It is an act of violence against the Constitution of our country, and the time has come that we must have justice or else we must not have the man.

It is a vicious and wasteful use of the taxpayers' hard-earned money, as well as a perversion of the will of the majority. What is the use of registering and voting as citizens of this country, with the understanding that the majority shall rule, if after these representatives are voted into office, the will of the majority is to be thwarted by a handful of prejudiced individuals who have no regard for democracy? It must be stopped if democracy is to survive. There should be a law making it a crime to attempt to pervert justice when justice has presented itself by a majority vote.

As one of your constituents, and one who stands for righteousness, truth, and justice, I am urging you to introduce a bill and work for its passage, which will make it illegal to filibuster against any measure which has previously received a majority vote in another branch of Congress. Perhaps the rule of cloture could automatically apply under such circumstances. However, whatever steps may be taken, I feel that it is one of the most important measures for the preservation of our democracy, and one that should be taken immediately.

Sincerely,

RADICAL LOVE.

Here is a letter from F. D. Patterson, president, Tuskegee Institute, dated December 21, 1939:

DEAR SIR: I send you the following information concerning lynchings for the year 1939. I find, according to the reports compiled in the department of records and research, that there were 8 persons lynched in 1939. This is 8 less than the number 6 for the year 1938; 5 less than the number 8 for each of the years 1937 and 1936; and 17 less than the number 20 for the year 1935; 2 of the persons lynched were taken from the hands of the law—1 from the jail and the other from an officer of the law outside of jail.

There were 18 reports of instances in which officers of the law prevented lynchings. All of these instances reported were in Southern States. In all instances the persons were removed or the guards augmented or other precautions taken. A total number of 25 persons, 5 white men and 20 Negro men, were thus saved from the hands of mobs.

Of the persons lynched, 2 were Negroes and 1 was white. The offenses charged were: Murder, 1; fatal injury to boy in automobile accident, 1; altercation with man, 1.

The States in which lynchings occurred and the number in each State are as follows: Florida, 2; Mississippi, 1.

Senator CONNALLY. I have here a speech by Edward E. Strong, chairman of the Southern Negro Youth Congress, February 9, 1940, from which I wish to quote one paragraph:

United States Congressmen who cry most about the many dangers threatening democracy are in the Congress by virtue of the fact that the majority of people in their States cannot vote. I am sure, for instance, that the Senator from Texas,

who is preparing to filibuster the antilynching bill to death, would be quickly retired if the 75 percent of the voteless Texas people could make their wishes known.

This includes considerable other material that I do not care to put in the record. I offer that paragraph to show the spirit of coercion that exists among some of the people favoring this legislation.

I have but little more I wish to introduce, and I will be through.

I have here a letter from W. T. Strom, sheriff of McCormick County, S. C., as follows:

MARCH 9, 1940.

Hon. BURNET R. MAYBANK,
Governor of South Carolina,
Columbia, S. C.

DEAR GOVERNOR: For the past 12 years I have been sheriff for McCormick County, S. C., and during this period I have had three cases that would have, possibly, resulted in mob violence and lynching had not I apprehended the defendants and placed them in the State penitentiary before feeling could be aroused.

I firmly believe that by such diligence I have been able to avert lynching. As you know, we have had two trials in the famous *Press Bibbs case*, where the defendant was charged and convicted for killing a white man. This case caused a great deal of feeling and I used every precaution with the aid of your constables and prevented any demonstration before or after the trial.

Another defendant, a Negro man, attempted rape upon a white girl in my county, was apprehended within a few minutes, and I placed the defendant in the penitentiary before the knowledge of the crime was known to the community. I feel that lynching was prevented in this case on account of quick action on the part of myself and deputies.

I wish to register my objection to antilynch bill, as I am confident that the peace officers and other officials of South Carolina can handle these emergency situations and evade mob violence in the majority of cases, as our record will disclose.

I am glad to cite these cases to you, and will give a more detailed statement of each of them if you so desire.

With kind personal regards, I am,

Yours truly,

W. T. STROM.

Senator CONNALLY. I have also a letter from J. E. Gamble, sheriff of Clarendon County, S. C., addressed to the Governor of South Carolina, reading as follows:

MY DEAR GOVERNOR: In reply to your telegram of even date I wish to advise that there has been no lynching or attempt or threat of lynching in this county in several years.

Please allow me to state that, in my opinion, the antilynching bill now pending in Congress would be the most absurd thing ever forced upon the people of this Nation should it become law. Instead of aiding law enforcement it would make murderers of peace officers. If a peace officer had a man under arrest and had reasons to believe that he was going to be overpowered by a mob and a prisoner taken from him, it would be human nature for him to kill the prisoner and say that he did it in the line of his duty rather than be tried in a Federal court and possibly be sentenced to 10 years in prison and fined $5,000. It is my sincere wishes that the pending bill be killed for the above-stated reasons and others.

With kindest regards, I am.

Senator CONNALLY. Also a letter from Tom M. Fellers, sheriff of Newberry County, S. C., addressed to Governor Maybank, as follows:

DEAR GOVERNOR: Your wire relative to telegram of Senator Connally. No lynching in Newberry County for more than 30 years. Only one incident in 1939 that might have led to an attempt to lynch: Negro killed a policeman in town of Newberry. Prompt action of citizens of community prevented any such attempt by capturing Negro and rushing him to penitentiary for safekeeping before any threats even of such lynching had been made. Subsequently said Negro was tried

in open court without any attempts or any threats of lynching, and was given a fair and impartial trial, convicted, and given a life sentence only. During said trial there was no excitement and no effort exerted to prevent said Negro from having a fair and impartial trial.

Senator CONNALLY. Here is a letter from Rufus Fant, solicitor of the tenth circuit of South Carolina, addressed to Governor Maybank:

DEAR GOVERNOR: Your wire regarding the antilynching bill in Congress received. There have not been any incidents in my county during the past 18 months that caused even any talk of lynching. It is my opinion that one of the factors contributing to our excellent record is that it is generally known and recognized that our officers will unhesitatingly do everything within their power to protect their prisoners and see that the law takes its course.

Senator CONNALLY. And here is a letter to Governor Maybank from A. R. Ross, sheriff of Pickens County, S. C., dated March 9, 1940, as follows:

DEAR GOVERNOR: In reply to your recent inquiry, with reference to mob violence, I wish to advise that we have not had any mob violence in this county during the past year.

On the account of some rumors I rushed J. C. Ham to another county for safekeeping.

Cordially yours,

A. R. ROSS.

Senator CONNALLY. I have here a number of telegrams, which I will not take the time to read, but which I should like to have incorporated in the record. I believe that is all I have. Thank you very much.

(The telegrams referred to are here set forth in full, as follows:)

COLUMBIA, S. C., *March 9, 1940.*

Hon. TOM CONNALLY,
United States Senate, Washington, D. C.

Am sending you telegrams forwarded to me by sheriffs of counties in South Carolina, showing, as you suggested, large number of cases where lynchings were prevented.

BURNET R. MAYBANK, *Governor.*

EDGEFIELD, S. C., *March 11, 1940.*

Gov. BURNET R. MAYBANK,
Columbia, S. C.

Served as sheriff 12 years and, although several crimes involving rape by Negroes on white women and other matters have occurred, no effort or threat to lynch has ever been heard of during this time.

L. H. HARLING,
Sheriff, Edgefield County, S. C.

HAMPTON, S. C., *March. 11, 1940.*

Gov. BURNET R. MAYBANK,
Columbia, S. C.:

No lynching threats occurred in 1939. One prevented in 1938.

A. M. LIGHTSEY,
Sheriff, Hampton County.

ORANGEBURG, S. C., *March 9, 1940.*

Hon. BURNET R. MAYBANK,
Columbia, S. C.:

Orangeburg County, whose population is more than 60 percent Negro, has had no lynchings or threats of lynching during 1939. Not only is this excellent

record true for the past 12 months but has continued for many years. The county seat has two large Negro colleges, one supported by the State of South Carolina. All law-enforcement officers in this county exert every effort to protect all of its citizens, be they white or black.

GEORGE L. REED,
Sheriff, Orangeburg County.

SUMMERVILLE, S. C., *March 9, 1940.*

Hon BURNET R. MAYBANK,
Columbia, S. C.:

In re antilynching bill, wish to advise there have been no lynchings nor any attempts at mob violence in this county for the past 12 years. Do not recall any incidents whereby prisoners were rescued by officers, as our people are above this sort of thing.

H. H. JESSEN,
Sheriff, Dorchester County, S. C.

MONCKS CORNER, S. C., *March 9, 1940.*

GOV. BURNET R. MAYBANK,
Columbia, S. C.:

There has been no lynching in Berkeley County and no occasions for prevention of lynchings.

JOHN W. HILL,
Sheriff, Berkeley County.

ABBEVILLE, S. C., *March 9, 1940.*

GOV. BURNET R. MAYBANK,
Columbia, S. C.:

In re telegram: There has been no attempt of lynching Abbeville County, year 1939.

F. B. MCLANE, *Sheriff.*

GREENVILLE, S. C., *March 8, 1940.*

GOV. BURNET R. MAYBANK,
Columbia, S. C.:

Your wire. There has been no lynching nor any attempt to lynch in Greenville County in several years, and certainly none in 1939. Please call on me for any cooperation you need from my office. Kind regards,

J. A. MARTIN, *Sheriff.*

CHESTER, S. C., *March 8, 1940.*

Hon. BURNET R. MAYBANK, *Governor,*
Columbia, S. C.:

No one has ever been lynched in Chester County. In all cases of attempted lynchings prisoners have been protected by officers. Kindest regards.

WILLIAM H. PEDEN,
Sheriff, Chester County.

COLUMBIA, S. C., *March 8, 1940.*

Hon. BURNET R. MAYBANK, *Governor,*
Columbia, S. C.:

Re telegram: We have had no lynchings or attempted lynchings in this county during the year of 1939.

T. ALEX HEISE, *Sheriff.*

GAFFNEY, S. C., *March 9, 1940.*

Hon. BURNET R. MAYBANK, *Governor,*
Columbia, S. C.

HONORABLE SIR: As sheriff of Cherokee County, S. C., it is my great pleasure to advise you that there has been no lynching or attempt at such in our county during 1939.

Respectfully submitted.

R. B. BRYANT,
Sheriff, Cherokee County.

FLORENCE, S. C., *March 8, 1940.*

Hon. BURNET R. MAYBANK,
Governor, Columbia, S. C.:

No threats of lynching in Florence County during 1939. One case prevented in 1938 through officers. If this information desired advise.

W. R. WALL, *Sheriff.*

MARION, S. C., *March 9, 1940.*

BURNET R. MAYBANK,
Governor, Columbia, S. C.:

In my investigation I find that there has not been a lynching or attempt at lynching in the last 30 years in Marion County.

J. LEON GASQUE, *Sheriff.*

CAMDEN, S. C., *March 9, 1940.*

BURNET R. MAYBANK,
Governor, Columbia, S. C.:

No threat of lynching in 1939. Have on two occasions since I was elected sheriff moved prisoners for fear of attempt to lynch.

J. M. MCLEOD, *Sheriff.*

DARLINGTON, S. C., *March 9, 1940.*

Hon. BURNET R. MAYBANK,
Columbia, S. C.:

Last attempt lynching Darlington County October 1, 1938. Case George Gates, rape, mob 500 prevented by law enforcement officers. Gates electrocuted November 9, 1938. Best regards.

C. A. GRINNELL, *Sheriff.*

GREENWOOD, S. C., *March 9, 1940.*

Hon. BURNET R. MAYBANK,
Governor, State of South Carolina, Columbia, S. C.:

Received your telegram. This is to advise that the county of Greenwood during the year 1939, and several years prior thereto, has had no lynchings or attempted lynchings. The people in my county believe in law and order and not mob rule.

Kindest regards,

E. M. WHITE, *Sheriff.*

CONWAY, S. C., *March 9, 1940.*

Gov. BURNET R. MAYBANK,
Columbia, S. C.:

I did not have any lynchings or attempts in 1939.

W. E. SESSIONS, *Sheriff.*

WINNSBORO, S. C., *March 9, 1940.*

Hon. BURNET R. MAYBANK,
Governor for South Carolina, Columbia, S. C.:

July 22, 1938, one Andy Ashford, Negro, attempted to assault a white woman and was immediately arrested and sent to State penitentiary for safekeeping. Was later brought back, and sometime thereafter was released on bond. Three days later information reached my office that a mob was forming to lynch him.

Defendant was by me immediately placed back in county jail. Pleaded guilty February 20, 1939, and sentenced to 6 years.

E. K. RABB,
Sheriff, Fairfield County.

AIKEN, S. C., *March 9, 1940.*

Hon. BURNET R. MAYBANK,
Governor of South Carolina, Columbia, S. C.:

Have had no threats of lynching in 12 years in office. Should such occurrence arise, will do everything in my power to prevent it.

J. P. HOWARD,
Sheriff, Aiken County, S. C.

CHARLESTON, S. C., *March 9, 1940.*

BURNET R. MAYBANK,
Governor of South Carolina, Columbia, S. C.:

Replying your telegram reference to lynching, have never heard of one occurring in Charleston County. I have been sheriff for 17 years and have never had any difficulty in enforcing the law. On the few times when there has been any threat or riot or disturbance that might have led to a lynching, I have been able with my own force to effectively control the situation.

J. M. POULNOT,
Sheriff of Charleston County.

ALLENDALE, S. C., *March 9, 1940.*

Gov. BURNET R. MAYBANK,
Columbia, S. C.:

Retel 8th, there has been no lynching or mob violence in Allendale County in the year 1939.

NEIL SANDERS, *Sheriff.*

LANCASTER, S. C., *March 11, 1940.*

Gov. BURNET R. MAYBANK,
Columbia, S. C.

DEAR GOVERNOR: There was not attempted lynching in this county in 1939, and has not been any lynching in Lancaster County in over 30 years. On any occasion where there would probably have been any lynching attempted, every possible precaution was taken by the peace officers.

R. A. BLACKMON,
Sheriff, Lancaster County.

BAMBERG, S. C., *March 9, 1940.*

Gov. BURNET R. MAYBANK,
Governor, Columbia, S. C.:

There was no threat of any lynchings in this county during the year 1939 or for the 10 years prior, which I have been sheriff of this country.

T. J. HADWIN, *Sheriff.*

SALUDA, S. C., *March 9, 1940.*

BURNET R. MAYBANK,
Columbia, S. C.:

No lynching nor prevention of lynching in Saluda County in 1939.

E. GARY DAVIS, *Sheriff.*

ST. MATTHEWS, S. C., *March 8, 1940.*

Hon. BURNET R. MAYBANK,
Governor, Columbia, S. C.:

As officer of 40 years' experience, having been sheriff 30 years, chief of police 10 years, I have never had a lynching in Calhoun County. I have had four legal

electrocutions from horrible murders, one in August 1939, a colored woman 65 years, brutally murdered by Frankie Dash, who was tried and electrocuted January 1940. Have always been able to handle any crowd of excited people who have attempted to take a prisoner from me. Am 64 years and have been an officer for 40 years and have never had a lynching in my county.

F. F. HILL, *Sheriff.*

CLEVELAND, MISS., *February 12, 1940.*

Senator PAT HARRISON:

Not only were there no lynchings in Bolivar County in 1939, but there was not a single case of murder or manslaughter in which a Negro was the victim a white man. Senate action should be predicated on fact not fiction, and e urge you to make every effort to clear the record of all falsehood.

E. D. RAYNER, *Sheriff,*
J. L. SMITH,
Ex-Sheriff, Bolivar County.

Senator VAN NUYS. I have received a great volume of similar resolutions and communications that I do not care to make a part of the record. But there is a news clipping which I believe to be worthy of inclusion because of its pertinence. With the consent of the committee, I would like to make that a part of the record.

(The matter referred to is here set forth in full, as follows:)

[From the Washington (D. C.) Star March 9, 1940]

BARBER HUNTED AS WIFE-BEATER, FLOGGED, FOUND DEAD AT ATLANTA

(By the Associated Press)

ATLANTA, GA., March 9.—Search for a 6-foot barber accused of wife-beating ended yesterday with the finding of his leather-lashed body near a pine knoll that has been the scene of a series of floggings by night riders in the last year.

Isaac Gaston, 36, beaten from the middle of his back to his knees, was found dead by a colored farmhand in a depression about 75 yards from trampled underbrush, a 4-foot strap and the tracks of many feet which indicated he was whipped unmercifully.

County Policeman J. W. Gilbert said the barber apparently was taken from his barber shop by floggers Thursday night. Two of his teeth were knocked out.

Several other persons, including a minister, another man, and two colored women had been flogged in the same locality the past year. None of these floggings was fatal.

The barber, whose shop is between suburban East Point and Hopeville, had a police record of drunkenness and had been sought since last Tuesday on a charge of wife-beating.

Police Chief William Tyler of East Point said the barber had taken an engagement ring, a gold cross and a $6 check from his wife, beat her, and used the proceeds to buy liquor.

Coroner Paul Donehoo delayed calling an inquest pending completion of the medical examination.

Gaston is survived by his widow and three young children.

Senator CONNALLY. That is all I have, Mr. Chairman.

Senator VAN NUYS. If there is no further testimony, and there appears to be none, the hearings are closed, and the committee will go into executive session.

(Whereupon, at 11:30 a. m., the hearings in the above matter were closed, and the committee went into executive session.)

×