CRIME OF LYNCHING

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

EIGHTIETH CONGRESS

SECOND SESSION

ON

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

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

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

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CRIME OF LYNCHING

MONDAY, JANUARY 19, 1948

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

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

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

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

Senator FERGUSON. The committee will come to order.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FINDINGS AND POLICY

SECTION 1. The Congress hereby makes the following findings:

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

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

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

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

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

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

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

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

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

RIGHT TO BE FREE OF LYNCHING

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

DEFINITIONS

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

PUNISHMENT FOR LYNCHING

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

PUNISHMENT FOR FAILURE TO PREVENT LYNCHING

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

DUTY OF ATTORNEY GENERAL OF THE UNITED STATES

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

COMPENSATION FOR VICTIMS OF LYNCHING

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

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

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

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

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

SEVERABILITY CLAUSE

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

SHORT TITLE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Senator Hawkes, do you desire to make a statement?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 1 states that the bill's provisions are:

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

In section 2, a mob is defined as—

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

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

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

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

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

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

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

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

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

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

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

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

Senator HAWKES. Well, this is injury or death.

Senator REVERCOMB. Do you go further than maiming?

Senator HAWKES. Maiming is certainly injury.

Senator REVERCOMB. Oh, yes.

Senator HAWKES. You are asking whether injury is maiming?

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

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

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

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

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

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

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

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

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

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

Section 6 contains the usual separability provision.

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

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

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

Senator FERGUSON. You may do that.

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

> In 1946 at least six persons in the United States were lynched by mobs. Three of them had not been charged, either by the police or anyone else, with an offense. Of the three that had been charged, one had been accused of stealing a saddle. (The real thieves were discovered after the lynching.) Another was said to have broken into a house. A third was charged with stabbing a man. All were Negroes. During the same year mobs were prevented from lynching 22 persons, of whom 21 were Negroes, 1 white.
>
> On July 20, 1946, a white farmer, Loy Harrison, posted bond for the release of Roger Malcolm from the jail at Monroe, Ga. Malcolm, a young Negro, had been involved in a fight with his white employer during the course of which the latter had been stabbed. It is reported that there was talk of lynching Malcolm at the time of the incident and while he was in jail. Upon Malcolm's release Harrison started to drive Malcolm, Malcolm's wife, and a Negro overseas veteran, George Dorsey, and his wife out of Monroe. At a bridge along the way a large group of unmasked white men, armed with pistols and shotguns, was waiting. They stopped Harrison's car and removed Malcolm and Dorsey. As they were leading the two men away, Harrison later stated, one of the women called out the name of a member of the mob. Thereupon the lynchers returned and removed the two women from the car. Three volleys of shots were fired as if by a squad of professional executioners. The coroner's report said that at least 60 bullets were found in the scarcely recognizable bodies. Harrison consistently denied that he could identify any of the unmasked murderers. State and Federal grand juries

reviewed the evidence in the case, but no person has yet been indicted for the crime.

Later that summer, in Minden, La., a young Negro named John Jones was arrested on suspicion of housebreaking. Another Negro youth, Albert Harris, was arrested at about the same time and beaten in an effort to implicate Jones. He was then released, only to be rearrested after a few days. On August 6, early in the evening, and before there had been any trial of the charges against them, Jones and Harris were released by a deputy sheriff. Waiting in the jail yard was a group of white men. There was evidence that, with the aid of the deputy sheriff, the young men were put into a car. They were then driven into the country. Jones was beaten to death. Harris, left for dead, revived and escaped. Five persons, including two deputy sheriffs, were indicted and brought to trial in a Federal court for this crime. All were acquitted.

These are two of the less brutal lynchings of the past years. The victims in these cases were not mutilated or burned.

The record for 1947 is incomplete. There has been one lynching, one case in which the victim escaped, and other instances where mobs have been unable to accomplish their purpose. On February 17, 1947, a Negro youth named Willie Earle, accused of fatally stabbing a taxi driver in the small city of Greenville, S. C., was removed from jail by a mob, viciously beaten, and finally shot to death. In an unusual and impressive instance of State prosecution, 31 men were tried for this crime. All were acquitted on the evening of May 21, 1947. Early the next morning, in Jackson, N. C., another Negro youth, Godwin Bush, arrested on a charge of approaching a white woman, was removed from a local jail by a mob, after having been exhibited through the town by the sheriff. Bush succeeded in escaping from his abductors, and, after hiding for 2 days in nearby woods, was able to surrender himself safely into the custody of FBI agents and officers of the State. The committee finds it encouraging to note that the Governor of North Carolina has made vigorous efforts to bring to justice those responsible for this attempted lynching.

While available statistics show that, decade by decade, lynchings have decreased, this committee has found that in the year 1947 lynching remains one of the most serious threats to the civil rights of Americans.

Senator EASTLAND. How many were there in 1947?

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

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

Senator EASTLAND. What was that incident?

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

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

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

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

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

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

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

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

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

Senator HAWKES. Yes.

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

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

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

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

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

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

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

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

Now, that is all I am going to read.

In addition to the sections that I have read, I recommend to the consideration of this committee the plate contained on page 21 of this report that I have referred to, "To secure these rights," which depicts

graphically the history of lynchings in the United States since 1882.

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

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

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

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

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

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

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

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

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

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

That is the end of the statement.

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

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

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

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

That is why I am interested in stopping this thing.

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

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

That is all I have to say.

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

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

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

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

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

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

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

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

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

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

Senator FERGUSON. You want equal justice under law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Senator FERGUSON. Yes.

Senator REVERCOMB. Most States have more than one district.

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

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

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

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

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

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

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

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

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

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

Is there anything else, Mr. Chairman?

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

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

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

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

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

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

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

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

Senator REVERCOMB. Does the letter set forth the reasons?

Senator EASTLAND. Yes.

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

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

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

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

Senator EASTLAND. I have those.

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

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

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

Senator REVERCOMB. I would like to hear the reasons.

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

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

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

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

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

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

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

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

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

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

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

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

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

Senator REVERCOMB. What is your thought on that?

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

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

Senator EASTLAND. Well, does he say that?

Senator FERGUSON. What does he say?

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

Senator REVERCOMB. Did you finish the letter?

Senator EASTLAND. That is all.

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

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

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

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

All right. Read this one.

Mr. YOUNG (reading):

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

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

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

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

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

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

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

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

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

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

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

Senator REVERCOMB. Does it specifically provide for civil recovery?

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

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

Senator FERGUSON. Yes.

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

Senator FERGUSON. Yes; I will read that.

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

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

Senator FERGUSON. Yes.

Read again what that says.

Mr. YOUNG (reading):

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

Senator FERGUSON. All right.

Mr. YOUNG (reading):

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

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

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

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

Sincerely yours,

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

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

Senator Eastland, there is a witness here now?

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

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

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

Mr. BARRY. I do, Senator.

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

Mr. BARRY. Yes.

Senator REVERCOMB. Before Mr. Barry proceeds:

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

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

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

Senator FERGUSON. Oh, yes. In the House.

All right, Mr. Barry.

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

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

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

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

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

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

Senator FERGUSON. You may proceed, Mr. Barry.

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

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

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

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

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

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

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. BARRY. That creates prejudice.

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

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

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

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

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

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

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

Senator FERGUSON. Yes; that is true.

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

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

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

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

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

Senator REVERCOMB. May I interpose at that point?

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

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

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

That law would be valid, would it not?

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

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

Mr. BARRY. There is no right of suit.

Senator REVERCOMB. There is no action against the State.

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

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

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

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

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

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

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

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

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

Senator FERGUSON. Is there any protection to them?

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

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

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

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

Mr. BARRY. That is right.

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

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

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

Mr. BARRY. Of a Federal official.

Senator REVERCOMB. A Federal official.

Mr. BARRY. That is quite true.

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

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

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

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

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

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

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

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

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

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

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

Mr. BARRY. That is under the Federal Constitution.

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

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

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

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

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

Mr. BARRY. No, sir.

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

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

Senator FERGUSON. Are there any questions?

Senator REVERCOMB. No questions.

Senator EASTLAND. I have none.

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

Senator FERGUSON. It has been very enlightening.

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

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

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

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

CRIME OF LYNCHING

TUESDAY, JANUARY 20, 1948

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

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

Present: Senators Ferguson and Eastland.

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

Senator FERGUSON. The committee will be in order.

You may proceed, Senator Morse, with your statement.

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

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

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

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

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

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

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

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

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

Senator MORSE. Yes, sir.

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

Lynching, whites and Negroes, 1919–40

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

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

Lynchings by States and race, 1882–1946

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Senator EASTLAND. Could I ask you a question?

Senator MORSE. Certainly.

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

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

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

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

Senator EASTLAND. All right.

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

Senator MORSE. Yes.

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

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

Senator EASTLAND. I see.

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

Senator EASTLAND. Have you that brief now?

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

Senator EASTLAND. That is all right.

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

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

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

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

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

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

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

Senator MORSE. That is right.

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

Senator FERGUSON. I understand that.

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

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

Senator MORSE. That is right.

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

Raper concludes:

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

Ray Stannard Baker, in 1908, stated:

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

Walter White states:

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

Gunnar Myrdal states:

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

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

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

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

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

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

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

Subsection (c) of section 1 recites that—

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

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

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

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

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

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

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

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

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

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

Senator MORSE. That is my contention, when——

Senator EASTLAND. Have you some authority for that statement?

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

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

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

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

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

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

Senator MORSE. Of course.

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

Senator FERGUSON. Not in this field.

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

Senator FERGUSON. Not in the lynching field.

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

Senator FERGUSON. I cannot agree with you.

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

Senator MORSE. 325 U. S. 91.

Senator EASTLAND. What was the title of the case?

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

Senator EASTLAND. Thank you.

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

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

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

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

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

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

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

Now as to the constitutionality of my bill.

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

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

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

The fourteenth amendment.

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

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

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

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

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

Senator EASTLAND. What was that citation?

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

Senator EASTLAND. That is the same case?

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

Senator EASTLAND. Thank you.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Senator EASTLAND. Thank you, sir.

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

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

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

Senator EASTLAND. Fine.

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

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

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

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

> In every case submitted to a jury—

reported the Attorney General proudly—

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

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

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

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

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

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

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

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

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

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

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

Article VI of the Constitution provides that—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

That question was resolved by the human rights provisions of the United Nations Charter, and by the subsequent adoption by the United Nations General Assembly of a resolution affirming the principles that genocide is a crime under international law whether committed by private individuals, public officials, or statesmen.[23] This resolu-

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

tion changes fundamentally the responsibility of a sovereign nation toward its citizens.[24] While the Nuremberg trials were confined in scope to acts committed after the commencement of war or in preparation for it, the inclusion of persecution of German nationals in crimes against humanity indicates that the field of international affairs has been broadened to include domestic activity of a nation.

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

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

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

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

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

[24] Lemkin, op. cit., p. 150.

[25] McDiarmid. The Charter and the Promotion of Human Rights, 14 State Department Bull. 210 (February 10, 1946); and Stettinius's statement, 13 State Department Bull., 928 (May 1945). See also letter of Acting Secretary of State Dean Acheson to the FEPC, published at length in the Final Report of FEPC, reading in part, "the existence of discrimination against minority groups in this country has an adverse effect upon our relations with other countries."

[26] See description of these provisions in Making the Peace Treaties, 1941–47 (Department of State Publications 2774, European Series 24), 16 State Department Bull. 1077, 1080–1082.

CONCLUSION

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

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

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

Senator FERGUSON. That is so ordered.

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

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

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

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

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

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

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

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

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

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

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

Senator MORSE. That is right.

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

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

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

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

Senator FERGUSON. Thank you very much, Senator.

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

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

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

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

[From the Washington Post, July 2, 1947]

ANTILYNCHING LAW FAVORED BY MAJORITY IN SOUTH, NATION,

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

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

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

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

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

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

The vote:

	Percent
Yes	69
No	20
No opinion	11

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

SOUTHERN VOTERS

	Percent
Yes	56
No	35
No opinion	9

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

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

	Percent
Would reduce	60
Little difference	24
No opinion	16

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

SOUTHERN VOTERS

	Percent
Would reduce	48
Little difference	37
No opinion	15

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

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

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

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

Senator WAYNE MORSE,
Washington, D. C.

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

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

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

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

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

Very truly yours,

NELSON A. MITCHELL,
United States Navy.

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

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

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

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

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

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

Respectfully yours,

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

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

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

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

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

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

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

Respectfully yours,

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

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

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

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

Sincerely yours,

HARRY W. LAIDLER, *Executive Director.*

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

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

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

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

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

Yours for humanity,

W. H. JERNAGIN, *Director.*

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

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

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

Respectfully yours,

RALPH H. ROWSE.

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

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

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

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

Sincerely yours,

DAVID D. LLOYD,
Director, Research and Legislation.

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

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

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

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

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

Sincerely yours,

GEORGE M. HOUSER.

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

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

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

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

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

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

Cordially yours,

Mrs. JOSEPH M. WELT,
National President.

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

DECEMBER 1947.

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

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

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

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

RESOLUTION

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

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

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

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

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

During the past 50 years more than 5,000 persons have met death in the United States by lynching. In recent years all of the lynch victims have been Negroes. Although every State has laws punishing such conduct as murder, rarely have lynchers even been prosecuted. The few prosecutions have usually resulted in

acquittals. So far as we have been able to discover, no lyncher of a Negro has ever been given a sentence commensurate with his offense.

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

December 18, 1947.

DECEMBER 6, 1947.

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

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

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

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

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

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

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

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

Yours very truly,

MARY MCLEOD BETHUNE.
Founder-President.

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

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

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

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

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

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

Fraternally yours,

LAYLE LANE.

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

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

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

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

So you might proceed in your own way, Congressman.

Representative Keating.

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

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

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

Representative KEATING. Thank you.

(H. R. 4528 is as follows:)

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

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

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

FINDINGS AND POLICY

SECTION 1. The Congress hereby makes the following findings:

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

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

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

(b) When persons within a State are deprived by a State or by individuals within a State, with or without condonation by a State or its officials, of equal

protection of the laws because of race, color, creed, national origin, ancestry, language, or religion, they are denied, or limited in the exercise of, human rights and fundamental freedoms.

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

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

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

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

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

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

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

RIGHT TO BE FREE OF LYNCHING AND LYNCH-MOB VIOLENCE

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

DEFINITIONS

SEC. 4. As used in this Act—

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

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

PUNISHMENT FOR LYNCHING

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

PUNISHMENT FOR FAILURE TO PREVENT LYNCHING OR APPREHEND OFFENDERS

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

DUTY OF ATTORNEY GENERAL OF THE UNITED STATES

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

COMPENSATION FOR VICTIMS OF LYNCHING

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

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

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

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

SEVERABILITY CLAUSE

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

SHORT TITLE

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

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

Senator FERGUSON. Yes; he covered each provision.

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

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

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

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

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

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

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

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

Senator FERGUSON. A tax levy.

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

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

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

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

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

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

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

Representative KEATING. That is right.

In all other respects the bills are substantially similar.

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

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

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

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

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

Representative KEATING. Yes.

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

Representative KEATING. That is right.

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

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

Representative KEATING. That is my feeling.

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

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

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

Representative KEATING. Well, that is true——

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

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

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

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

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

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

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

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

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

Senator FERGUSON. Yes.

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

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

Representative KEATING. Yes.

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

Representative KEATING. I certainly do agree.

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

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

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

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

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

Representative KEATING. That is right.

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

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

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

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

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

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

Representative KEATING. That is right.

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

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

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

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

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

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

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

Representative KEATING. I thank the Chairman.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Hon. HOMER FERGUSON,
United States Senate.

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

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

Very sincerely yours,

KENNETH B. KEATING.

MEMORANDUM ON S. 1352 AND H. R. 4528

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The war changed all that.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Shots were fired into the Japanese Presbyterian Church in Salinas.

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

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

Americans were hospitalized for wounds received when attacked near Lodi.

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

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

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

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

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

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

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

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

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

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

Mr. YOUNG. That is correct, sir.

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

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

CRIME OF LYNCHING

WEDNESDAY, JANUARY 21, 1948

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

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

Present: Senators Ferguson and Eastland.

Present also: Robert Barnes Young committee staff.

Senator FERGUSON. Mr. Houston.

Mr. HOUSTON. Here, sir.

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

You may proceed, Mr. Houston.

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

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

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

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

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

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

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

public spectacle, and the lynchings from jail which were so common at the time that the original Dyer bill and the other bills were drafted does not occur to the same extent now.

Maybe an exception, if it were really traced out, would be the lynching in Monroe, Ga., on July 20, 1946, but even in that lynching where the parties were taken out of jail and lynched on the way from jail, the difficulty of proof shows that where you limit the punishment and the corrective force of the legislation to the State officers, you are sometimes up against insuperable odds from the standpoint of proof.

Under the Hawkes bill, unless evidence could be obtained showing that the sheriff or peace officer in some manner was a conniver in the lynching, the Federal Government would continue to be just as helpless to punish such lynchings as it is today.

We don't think that with the very broad base of constitutionality in the Wagner-Morse bill that there would be any reason for passing an adequate bill such as the Hawkes or Knowland bills.

I would like to call the attention of the committee to the report of the President's Committee on Civil Rights which in effect endorses the bill here introduced by Senators Wagner and Morse. Although that report does not by name mention the Wagner-Morse bill, I believe that an examination of the report set over against the bill will show that in effect Senators Wagner and Morse had anticipated the committee by more than 6 months.

For example, the committee recommends that the offense of lynching be defined broadly. That is the report on page 157. Section 4 of the Wagner-Morse bill defines lynching as any violence by two or more persons upon person or property committed because of the victim's race, creed, color, national origin, ancestry, language, or religion, or committed as an attempt to take punishment in their own hands.

In other words, when a group of persons inflicts death, bodily harm or property destruction on a victim because of antagonism to his race or religion or his national origin, or when a group of persons takes the law in their own hands to inflict their own notions of summary punishment, the proposed bill would punish each member of that group as lynchers.

In the second place, the President's committee recommends that to be effective, an antilynching law should make each of the following crimes: "Participation of public officers in a lynching," "failure by them to use proper measures to protect a person accused of crime against mob violence," "the failure or refusal of public officers to make proper efforts to arrest members of lynch mobs and to bring them to justice," "action by private persons taking the law into their own hands to mete out summary judgment upon an accused person," and "action by either public officers or private persons meting out summary judgment and private vengeance upon a person because of his race, color, creed, or religion," or national origin, as it should be in this respect, the report correctly catalogs and approves the offenses covered by sections 4 and 5 of Senator Morse's bill.

In the third place, the President's committee recommends that "the statute should authorize immediate Federal investigation in lynching cases to discover whether a Federal offense has been committed." This is also accomplished by section 7 of Senator Wagner and Senator Morse's bill.

Fourth, the committee recommends the maximum penalty of $10,000 fine and a 20-year prison term. These are the exact figures that are fixed in section 5 of the Wagner-Morse bill.

I think that Senators Wagner and Morse are to be congratulated upon introducing a bill that the President's committee has not been able to improve upon and which it recommends.

It is also to be noted that the President's Committee believes that such a bill would in all of its part be supported by several constitutional bases and that "these are sufficiently strong to justify prompt action by Congress," that statement appearing in the report on page 158.

At other places in its report the President's Committee has copied from the constitutional grounds set forth in the Wagner-Morse bill. The committee endorses resting legislation to protect the civil rights on the fourteenth amendment as recited in section 1 (a) and 2 (a) of the proposed bill and also endorses basing such legislation on the treaty obligations assumed by the United States under articles 55 and 56 of the United Nations Charter.

This also is provided for in section 1 (b) and 2 (b) of the proposed bill.

Similarly, the recitals in the committee's report with respect to the importance of the right not to be lynched and the state of the observance of that right in the United States coincide in all respects with the findings set out in the Wagner-Morse bill. The committee begins its discussion of lynching by stating, page 20:

> Vital to the integrity of the individual and to the stability of a democratic society is the right of each individual to physical freedom, to security against illegal violence, and to fair, orderly legal process. Most Americans enjoy this right, but it is not yet secure for all. Too many of our people still live under the harrowing fear of violence or death at the hands of a mob or of brutal treatment by police officers.

The condonation by States which lynching has generally received is described as follows; I quote from the report, pages 23 and 24:

> While available statistics show that, decade by decade, lynchings have decreased, this committee has found that in the year 1947 lynching remains one of the most serious threats to the civil rights of Americans.

I would like to digress and to emphasize the word "threats," because to create terror in a community or in a minority group it is not necessary always to have a lynching but the very threat of the presence and possibility of lynching as a community pattern of violence or as a community pattern of correction is perfectly ample to keep the minority group or the community in a state of terror and subjection.

So, so long as lynching remains a threat, there is justification for this Federal legislation.

To resume quoting:

> It is still possible for a mob to abduct and murder a person in some sections of the country with almost certain assurance of escaping punishment for the crime. The decade from 1936 through 1946 saw at least 43 lynchings. No person received the death penalty, and the majority of the guilty persons were not even prosecuted.
>
> The communities in which lynchings occur tend to condone the crime. Punishment of lynchers is not accepted as the responsibility of State or local governments in these communities. Frequently, State officials participate in the crime, actively or passively. Federal efforts to punish the crime are resisted. Condonation of lynching is indicating by the failure of some local law-enforcement officials to

make adequate efforts to break up a mob. It is further shown by failure in most cases to make any real effort to apprehend or try those guilty. If the Federal Government enters a case, local officials sometimes actively resist the Federal investigation. Local citizens often combine to impede the effort to apprehend the criminals by convenient "loss of memory"; grand juries refuse to indict; trial juries acquit in the face of overwhelming proof of guilt.

The committee report also contains, page 21, a statistical chart and map showing the number and distribution of lynchings occurring since 1882. From these it appears that in recent years the victims have all been Negroes and that only the New England States have been entirely free of lynchings.

I was here, Mr. Chairman, on Monday, and heard the solicitor general of the State of Tennessee testify there had been no lynchings in Tennessee in several years. I should like to call the committee's attention to the report in 1944, November 23, at Clarksville, Tenn., James T. Scales, 16-year-old inmate of the State Training and Agricultural School for Negroes, was accused of the murder of both the wife and daughter of the school superintendent, white, was lynched by a mob of local whites. The youth according to persons who knew him, although personally maladjusted, had not previously given any basis for predicting participation in a crime as brutal as that attributed to him.

Of course, no one at all was either arrested or prosecuted at all for this lynching.

I should like also to call attention to the Columbia, Tenn., lynchings which occurred February 25, 1946, and thereafter, which I think have produced the greatest blot on America's record so far as the opinion of the nonwhite peoples of the world are concerned, of anything in the postwar events.

That was known generally as the Tennessee riots. Even assuming, which is not true, that there was resistance, nevertheless, the complete devastation and destruction of property and wanton killings in the attempts of the officers purportedly to put down resistance would certainly be punished under this bill, because I take it that an officer who exceeds his authority has no protection whatsoever by virtue of his official position, and that he would then come under the definition of a trespasser who would be just the same as a private citizen under no cloak of official authority.

Likewise, as a sequel to this Tennessee riot you have the wanton killings in jail by the officers of unarmed victims.

So the statement that there have been no lynchings in Tennessee simply means that the record is not being examined, but persons are speaking just from their own wishes.

I mention the foregoing facts because I think that they demonstrate that it would be a mistake to report the Hawkes or the Knowland bill instead of 1352, and the wholehearted nonpartisan approval which the Wagner-Moore bill has evoked should carry great weight with this committee. We think that the bill is a fine piece of legislative draftsmanship and if enacted would give the Federal law-enforcement officers a weapon with which to put an end to the disgrace of lynching.

As to the constitutional basis for S. 1352, the findings set forth in sections 1, 2, and 3 of S. 1352 invoke as the constitutional foundation of the proposed legislation the privileges and immunities clause, the due process clause and the equal protection clause of section 1 of the fourteenth amendment, the treaty-making power set forth in article

V of the Constitution, the power of Congress to define and punish offenses against the law of nations set forth in clause 10 of section 8, article I, and the obligations assumed by the United States under articles 55 and 56 of the United Nations Charter.

In my opinion, each one of the grounds furnishes full and independent constitutional sanction for all parts of the proposed legislation.

As to the fourteenth amendment, the decision of the Supreme Court of the United States in Screws versus 325 U. S. 91, upheld the constitutionality of section 20 of the Criminal Code as applied to prosecute a sheriff who beat to death a prisoner in his custody. In so holding, the court said at page 106:

> Those who decide to take the law into their own hands and act as prosecutor, jury, judge, and executioners plainly act to deprive a prisoner of the trial which due process of law guarantees.

I take it that all of us would admit that the right to a trial by due process of law is one of the Federal civil rights protected by the Constitution.

This case in our opinion is complete authority for the constitutionality of all of the provisions of the proposed bill insofar as they apply to State officers or State subdivisions. The provisions of the proposed legislation which punish private individuals for their participation in a lynching rest on a finding set forth in section 1 of the proposed bill that by virtue of condoning lynchings over the years, a custom has been created, that is to say, that persons can indulge in lynching without the fear of State prosecution, and to that extent I want to call the committee's attention to the civil rights cases which appear in 109 U. S. 3, which have been considered landmarks in United States constitutional law, that they recognize that in such a situation where the State has either endorsed, adopted, or enforced the private deprivation of rights, corrective action or remedial legislation was authorized by the fourteenth amendment.

In that case the Supreme Court pointed out that the sections of the civil rights act providing that all persons should have the same security of persons and property as white persons have "is clearly corrective in character, intended to counteract and furnish redress against State laws and proceedings, and customs having the force of law, which sanction the wrongful acts specified." I quoted then from page 16.

If history has demonstrated that there is a custom in certain States to have extrajudicial punishment, summary judgment by individuals not cloaked with the authority of law, and if over the years the State has refused or failed to prosecute, apprehend, punish, or do anything else except condone, adopt, and enforce the private vengeance which these private individuals have meted out to the victim, then we say that this lynching has become a custom having the force of law in such States, that it amounts to State action, and that corrective legislation is constitutional.

Indeed it is to be noted that many of the statutes enacted in the decade following the adoption of the fourteenth amendment specifically referred to customs and treated conduct performed under the tradition or custom as State action.

Furthermore, the civil-rights cases specifically listed as a violation of the fourteenth amendment acquiescence by the State in such acts as

"allowing persons who have committed certain crimes (horse stealing, for example) to be seized and hung by the posse comitatus without regular trial." That is at page 23.

Moreover, when States punish murderers of white persons but do not punish white persons who lynch Negroes, by so doing the State thereby denies to Negroes the equal protection of the laws. The civil-rights cases recognize such inaction as the basis for corrective remedial legislation by Congress.

In connection, I should like to say that although we are arguing the case of the Negro, I am quite sure that the witnesses who appeared before the committee yesterday showed that the terror of lynching spreads much wider than the minority group of Negroes.

The eminent sociologist, Mr. Charles S. Johnson, president of Fiske University, and Herman F. Long, have indicated in their recent monograph, which was published by the Fiske University Press in 1948, that antipathy directed first against one minority group tends to generalize itself against all minority groups.

So, in the argument that I am making with particularity concerning Negroes, because I know that situation best, I should like to apply that law which has been demonstrated in the history of Nazi Germany where the persecution which started against the Jews spread until you had a general reign of terrorism over the entire German nation.

The sponsors of the fourteenth amendment in the committee hearings and debates which preceded the enactment of enforcement legislation stated repeatedly that where the State denied the Negroes the full protection of the law, Congress would have power to enact legislation punishing not only the State officers but all individuals who violated protected rights. Such statements were made not only by Representative John A. Bingham, the draftsman of section of the amendment who was in charge of its course through the House, and Senator Howard, in charge of the bill in the Senate, but also by numerous other Congressmen.

I refer to the Congressional Record (42d Cong., 1st sess.), at pages 83 to 85, 150 to 154, 251, 375, 475 to 477, 505 to 506. These Members of Congress stated that in their understanding the State was to be deemed to have denied the equal protection of the laws within the meaning of the fourteenth amendment when the inequality resulted from omission as well as commission. If a State failed to enforce its laws to protect those who were the victims of violence on account of race, color, religion, or national origin, then Congress had the power and the duty to enact legislation punishing the offenders even though they were private individuals because again that is corrective action against either the inaction or the misdirected action of the States.

They expressed it to have been their intent that Congress could punish murder or robbery which the State failed to punish because of the race, color, or previous condition of servitude of the victim.

I cite the committee to the Congressional Globe of the Forty-first Congress, second session, pages 3611 to 3613; the Congressional Globe, Forty-second Congress, first session, the appendix, pages 83 to 85, 317, 334, 429, 459, 475 to 477.

That such was the intent of the sponsors of the fourteenth amendment is today recognized by all modern students of the question. I refer the committee to Mr. Flack's book, The Adoption of the Fourteenth Amendment, pages 75 to 77, 81 to 85, 90, 232, 237, 239, 242,

245, 246, 247, 277; to Carl Brent Swisher's American Constitutional Development in 1943, pages 329 and 334; to Louis B. Baudin, Truth and Fiction About the Fourteenth Amendment (16 New York University Law Quarterly Review, November 1938), at page 19; to Howard Jay Graham, the Conspiracy Theory of the Fourteenth Amendment (47 Yale Law Journal, January 1939, p. 371).

No piece of legislation based on this theory has ever been presented to the Supreme Court. There is every reason to believe, however, that in view of the clear recognition of congressional power to proceed on this foundation, both in the legislative history of the fourteenth amendment and in the civil rights cases (109 U. S. 3, pp. 14 and 16, 23, 24, 25), the court will uphold this legislation.

As to the treaty-making power, in the United States Supreme Court's decision in *Missouri* v. *Holland* (252 U. S. 416) in 1920, dealing with the statute to enforce the Migratory Birds Treaty between the United States and Canada, the Supreme Court ruled that Congress may enact statutes to carry out treaty obligtaions even where in the absence of a treaty it has no power to pass such a statute.

We believe that the United States by entering into and ratifying the United Nations Charter as a treaty is obligating the United States to promote—

universal respect for and observance of human rights and fundamental freedoms for all without distinctions as to race, sex, language, or religion—

In Congressional Record 8189–8190.

I am referring particularly to article 55 (c) of the United Nations Charter. By virtue of article 6 of the Constitution this obligation as a treaty becomes the supreme law of the land. Section 1 (b) of the Wagner-Morse bill contains a congressional finding that lynchings are denied because of race, color, or religion of human rights and fundamental freedoms. Section 2 (b) cites that one of the purposes of the proposed legislation is to promote respect for human rights and fundamental freedoms in accordance with the treaty obligations assumed by the United States under the United Nations Charter.

The treaty-making power, taken together with the United Nations Charter, I believe forms a second firm constitutional foundation for Federal antilynching legislation.

I think it would interest the committee to have the committee's attention called to the Oyama case versus California, which was decided here just Monday, 2 days ago. That case involved the California alien laws. In that case, the father, Kajoro Oyama, had paid for certain agricultural land and taken title in the name of his 6-year-old son, Fred, who was a United States citizen. The court in California held that that was done to avoid the effect of the land laws and declared an escheat. The decision of the California court was reversed by the Supreme Court of the United States. Mr. Justice Black and Mr. Justice Douglas concurred in the opinion. Mr. Justice Black wrote a separate concurring opinion in which Mr. Justice Douglas agreed, and it is important for our purpose that we see that Mr. Justice Black also upheld the effect of the United Nations Charter.

I would like to quote from the opinion:

There are additional reasons now why that law stands as an obstacle to the free accomplishment of our policy in the international field. One of these reasons is that we have now pledged ourselves to cooperate with the United Nations to "promote * * * universal respect for, and observance of, human

rights and fundamental freedoms for all without distinction as to race, sex, language, or religion." How can this Nation be faithful to this international pledge if State laws which bar land ownership and occupancy by aliens on account of race are permitted to be enforced?

If I might paraphrase, we might say, How can this Nation be faithful to this international pledge if States refuse to give protection to persons within their jurisdiction on account of race, color, creed, religion, or national origin, against violence?

So it seems to me that under the decision of Missouri versus Holland and under the treaty of the United Nations Charter——

Senator FERGUSON. Do you have any extra copy of that?

Mr. HOUSTON. I will be very happy to leave that.

Senator FERGUSON. Leave that, with your statement.

Mr. HOUSTON. I shall be very glad to, sir. It seems to me we have a complete independent ground for this proposed legislation and a ground which was not in existence at the time that the bills upon which the Hawkes and Knowland bills were adopted were originally drafted back in the thirties.

I should like now to take up certain specific provisions of the bills.

The Knowland and the Hawkes bill are very much alike. The Hawkes bill, however, does not contain the provision, section 6, about the so-called Lindbergh law, which is also contained in section 9 of the Wagner-Morse bill. As to the necessity for extending the Lindbergh law to the crime of lynching, I should like to refer to the testimony that I gave to a subcommittee, on February 14, 1935, of the Committee on the Judiciary, Seventy-fourth Congress, first session, in which I pointed out that in lynchings which occur close to the line, we have in the national association asked the Department of Justice to intervene and investigate under the Lindbergh law.

For example, I am quoting now from the testimony on page 27, paraphrasing that testimony: On October 4, 1934, near Darien, Ga., the house of one Curtis James was broken into. James was shot and abducted by the mob, but in spite of intensive search, his body was never found. On October 15—that is, more than 1 week after his disappearance—the national association wrote the Department of Justice asking why the abductors of James could not be prosecuted under the Lindbergh law.

Darien, Ga., is very close to the State line. On October 20, the Department replied that there is nothing to indicate that the person alleged to have been kidnaped was transported in interstate commerce and was held for ransom, reward, or otherwise.

Claude Neal was kidnaped from jail in Brewton, Ala., on October 26, 1934, admittedly taken across the State line, and lynched at Marianna, Fla. The Department of Justice refused to investigate that lynching under the Lindberg law, in spite of the fact that there was transportation in interstate commerce, on the ground that there was no pecuniary motive or interest in the kidnaping and the transportation.

Senator FERGUSON. In other words, no demand, really, for ransom.

Mr. HOUSTON. That is right. So I think it is absolutely indispensable and clearly within the jurisdiction of Congress to extend the kidnaping law to transportation in interstate commerce for the purpose of lynching.

Senator FERGUSON. The reading of the so-called Lindbergh law would indicate that it did not apply to lynching?

Mr. HOUSTON. At the present time; yes, sir.

Senator FERGUSON. The way it is worded.

Mr. HOUSTON. Therefore we are asking an amendment which will extend it to that degree.

I should like, also, to call attention particularly to section 8 of the Wagner-Morse bill——

Senator FERGUSON. Has there been any indictment at all under the Lindberg Act?

Mr. HOUSTON. For lynching?

Senator FERGUSON. Yes.

Mr. HOUSTON. No, sir.

Senator FERGUSON. The Department has always declined even to investigate?

Mr. HOUSTON. On the ground that it was not within the scope of the law.

Senator FERGUSON. But could they not have gone into the conspiracy angle?

Mr. HOUSTON. I think they could have, but they still say that even then—you are not talking about the Lindbergh law; you are talking about section 20.

Senator FERGUSON. Yes.

Mr. HOUSTON. I think that is true.

Senator FERGUSON. At least they could have made their investigation under that section.

Mr. HOUSTON. I think that is quite true, Senator; but on the other hand, we have been troubled in many respects by reluctance on the part of the Department of Justice to take hold, except where it had what you might call unmistakable grounds of jurisdiction.

Senator FERGUSON. In other words, you have almost to prove the conspiracy first before they will investigate.

Mr. HOUSTON. That is right.

I would like to call the committee's attention to section 8 of the Wagner-Morse bill, which is compensation for victims of lynching, which makes the governmental subdivisions liable to civil penalty in case of lynching occurring within the subdivision.

There has been some talk about the question of exemption of the States from suit. Of course, that does not apply to governmental subdivisions. What I should like to point out and emphasize, however, is that this provision has been in all of the proposed antilynching laws. It is nothing novel. As a matter of fact, it goes back even before the Norman laws. In the old law of the hundred in the Anglo-Saxon days, the corporate, the hundred, was visited with export liability for murders found within the limits of the hundred.

Senator FERGUSON. The old hew-and-cry law.

Mr. HOUSTON. That is right, sir. For that reason it seems to me that it is idle to talk about putting the civil responsibility upon the county as being a violation of the Constitution.

I might also say one other thing, and that is this: The very problem of proof which may be insuperable in criminal prosecutions is not present in the situation of the civil action. You also have in the civil action the possibility of directed verdicts which you don't have in the criminal prosecution.

On top of that, from the standpoint of public responsibility, when the members of the community feel that they have an immediate economic interest in preventing lynching, I think that the temper and the climate in the community will be so antagonistic to lynching that we will need the criminal prosecution much less if we had a civil liability than we would if we had no civil liability.

Finally, as to this, I should like to say that the civil liability limited between 2,000 as a minimum and 10,000 as a maximum is frequently less than the cost of a trial; for example, such as the trial of the lynchers of Willie Earl in South Carolina.

In many respects what is actually happening in fact is not placing a burden on the community, but really saving the community from all of the investigation and strain and expense of criminal prosecution.

Senator FERGUSON. A question was raised yesterday about the difficulty of collecting a judgment. Would you give us any help on that? What might be done to simplify or allow collection of these judgments?

As a rule, it is a complicated procedure to collect a judgment against a State or a municipality or subdivision of a State.

Mr. HOUSTON. That is true, but there would be two things, it seems to me. One is that you have a power of contempt, which certainly would prevent any State officer from willfully interfering with an attempt to collect a judgment. You might have in many instances property of the county which is not used for direct governmental purposes. You might have property, for example, which has been taken in on tax sales and other things like that. Or you might have county revenues which might be available. At any rate, I think that the very fact of the existence of a judgment, even if unsatisfied, would have a corrective effect, a prophylactic effect, so to speak, even if the judgments were not collectible by order process, just as ordinary civil judgments are, so the property of the county used for governmental purposes would be exempt, like the jail and things like that; nevertheless, I think within the provisions of State laws there would be the time over which one could be looking for property, when one could be looking for other assets of the county, or it might be that there would be State laws for authorization of a levy, for example.

Senator FERGUSON. Sometimes they provide for a tax levy.

Mr. HOUSTON. A tax levy to satisfy such judgments. Of course, if the officials did not levy the tax, then I think they would come within the provisions of contempt of the Federal court for not carrying out the mandate under the State laws upon order.

I should like, because the constitutionality of the bill has been so clearly explained by Senator Morse, to conclude my testimony with just about three statements.

One, on the question of the imperative necessity of enacting antilynching legislation. I would like to call the international situation to the minds of this committee. I would simply like to remind the committee first about the action of the Panamanian National Legislature in rejecting the proposed lease of 13 military bases to the United States. That goes back to race discrimination, which started at the

time of the building of the Panama Canal, when the silver standard was established for Panamanians and colored workers, whereas American workers were placed on the gold standard.

Also, it goes back, unfortunately, to the fact that our American troops in recreation attempted to introduce in Panama segregation and discrimination which did not exist in Panama itself.

I call your attention to the fact that the record of the United Nations shows that on issues of color, all other nations, nonwhite nations of the world, vote against the United States and Great Britain. They leave Great Britain and the United States completely alone upon issues which raise the color issue.

More important, I should like to have the authority to file with the committee a copy of Army Talks, No. 210, which was released just January 17, 1948. Those are instruction pamphlets for commanding officers for the purpose of instructing all the personnel under their commands.

On page 1 this talk points out the fact that race propaganda is what the enemies of the United States beam to the nonwhite nations of the world. It mentioned particularly that right after Pearl Harbor, Japan raised the issue as to how the United States could be fighting for racial equality or to eliminate racial discrimination when there was race discrimination in the United States.

In the Detroit riots, this pamphlet says that Japan had a field day beaming to the nonwhite nations the fact of these disorders occurring in the city of Detroit.

Likewise, they point out the fact that these difficulties in the United States are reported to the nationals of the nations which are involved, for example, difficulties against Mexico. I think the committee can find that even in the treaties concerning the importation of Mexican nationals for agricultural labor, serious questions have been raised in the Mexican Chamber of Deputies concerning the treatment accorded Mexican laborers here in the United States on the ground of national origin.

The Army Talks say that if we do not eliminate race discrimination, religious discrimination, in a global war we are putting the United States under a handicap that is almost insuperable.

That, it seems to me, since lynching is the most violent, virulent manifestation of racial prejudice would be the point to start. Let us then wipe out the type of thing which does not even let these minorities come into a court, which gives these minorities the right to security of life and person and property. That, at least, gives us the time in which to argue out perhaps other things, such as we argued out the restrictive covenant cases in the United States Supreme Court last week, such as now is an issue before the United States Supreme Court and the conscience of the Nation on the question of equality of educational opportunity in the State of Oklahoma.

The importance of lynching is right here. Suppose in the Sipuel case, this girl under the mandate of the United States Supreme Court should report to the University of Oklahoma and there should be met with violence directed against her on the ground of her race or color.

If we are going to have a government of laws, then we must establish the supremacy of the law, and there can be no supremacy of law unless the crime of lynching is wiped out. Since the States have not done it, then it is up to the Federal Government.

I call the chairman's attention to the fact that the whole base of this proposed legislation is entirely corrective.

Senator FERGUSON. Do any State laws punish lynching?

Mr. HOUSTON. There are a number of State laws. They were collected in Chadburn's Lynching and the Law, back in 1934. But unfortunately the State laws are honored in the breach rather than in the observance.

Senator FERGUSON. Of course all of them would hold it murder, would they not?

Mr. HOUSTON. I was just going to say, as a matter of fact, proof that this legislation is corrective is the fact that every State has a law against murder, and it is the very fact that they do not enforce their laws against murder which means that there is a State inaction which again and independently it seems to me is the basis for this corrective legislation. That is a compilation, a very authoritative work. I think Your Honor would find all the reference in the work you would need to establish the State laws and also the base for enactment of Federal legislation as of the date of that publication.

Mr. Chairman, at this point I ask that you permit me to insert in the record some excerpts from a pamphlet published by the Department of the Army designated as Armed Forces Talk 210.

Senator FERGUSON. It will be made part of the record.

(The material referred to is as follows:)

Three-fourths of the people of the world are what we call colored. These people naturally look to the treatment of our colored citizens to see what we really mean when we speak of democracy. Racial and religious prejudice alienates the confidence of the vast nonwhite populations as well as other peoples, thwarts their hopes and our hopes of peace and freedom, and ultimately creates the conditions from which future global wars can develop.

How we treat minorities is, therefore, more than a matter of mere domestic concern. Almost 13,000,000 people in the United States were born in Europe. The mistreatment of some Mexicans in the United States echoes throughout North and South America; a race riot provokes discussions and resentments in Africa, the Philippines, and among the 800,000,000 nonwhite people in China and India.

Throughout the world there are millions of people who believe that World War II was a total war against fascism and Fascist ideas. Their concept of peace includes the hope—even the determination—that there will be no such thing as superior and inferior peoples anywhere in the world.

* * * * * * *

The magic of race prejudice, the Japanese discovered, had performed miracles in Europe. If Hitler could seize Germany and disrupt Europe with the help of race hate, the Japanese saw no reason why they couldn't do the same thing to Asia. About a week after Pearl Harbor, the Japanese were broadcasting: "How can America be fighting for racial equality when it does not exist in America?" During the 1943 race riots in Detroit, the Japanese propagandists had a field day broadcasting the news to hundreds of millions of nonwhites in Asia and throughout the world.

Senator FERGUSON. We will take a very short recess and then the next witness is Mr. Arent.

(A short recess was taken.)

Senator FERGUSON. The committee will come to order.

You may proceed, Mr. Arent.

STATEMENT OF ALBERT ARENT, CHAIRMAN, EXECUTIVE COMMITTEE, WASHINGTON, D. C., CHAPTER, AMERICAN JEWISH CONGRESS, WASHINGTON D. C.; ACCOMPANIED BY JOSEPH B. ROBISON ATTORNEY, STAFF OF COMMISSION ON LAW AND SOCIAL ACTION, AMERICAN JEWISH CONGRESS, NEW YORK CITY; AND SANFORD H. BOLZ, WASHINGTON REPRESENTATIVE, AMERICAN JEWISH CONGRESS

Mr. ARENT. I am appearing here in behalf of the American Jewish Congress. My name is Albert E. Arent. I am chairman of the executive board of the Washington, D. C., chapter of the congress, whose national headquarters are 1834 Broadway.

With me is Mr. Joseph Robison, a lawyer with the commission on law and social action of the American Jewish Congress.

I should like permission of the committee to have him participate in any discussion that may develop.

After the very excellent and thorough statement which Mr. Houston gave this morning, I think that I can curtail my own statement somewhat and merely say, as spokesman for the American Jewish Congress, that I think I can endorse wholeheartedly the position which he has taken and most of the analyses which he has offered.

May I ask that the prepared statement which we have handed to the clerk of the committee be made a part of the record? In that case, I could curtail my testimony.

Senator FERGUSON. It will be placed at the beginning without interruption.

(The prepared statement of Mr. Arent follows:)

The American Jewish Congress was organized in part "* * * to help secure and maintain equality of opportunity for Jews everywhere, and to safeguard the civil, political, economic, and religious rights of Jews everywhere." Our movement recognizes fully that equality of opportunity for Jews can be truly secured only in a genuinely democratic society.

Democracy is jeopardized wherever the orderly processes of government are set aside. Experience here and abroad has shown that the lives and safety of all minorities are in danger whenever strong-arm squads are permitted any leeway. The three bills, S. 42, S. 1352, and S. 1465, are designed to protect and extend our constitutional system of due process and equal protection. As Americans who fervently wish to see that system maintained, we support these bills.

The purpose of the three bills is a simple one. It is to prevent conduct which is universally recognized as criminal and wrong. It is to invoke the authority of the Federal Government in situations where experience has shown it to be needed.

There are some differences between the three bills which I shall discuss later. Generally, S. 42 and S. 1465, which are almost identical in substance, are more narrowly drawn that S. 1352. We favor adoption of S. 1352 with certain additions to the section which contains legislative findings.

2. Lynchings subvert constitutional principles

Lynching is a matter of national concern. This can readily be seen as soon as the nature of lynching is understood. It is not merely murder, assault, or destruction of property. Those crimes ordinarily can be and are reached by the orderly processes of local government. The essence of lynching is that its intent and purpose is to usurp governmental powers. It occurs and is condoned only where local government fails to perform its functions or acts in such a way as to invite illegal conduct by private groups.

Our Constitution guarantees to each State "a republican form of government" (art. IV, sec 4). The fourteenth amendment prohibits each State from depriving "any person of life, liberty, or property without due process of law," or from

denying "to any person within its jurisdiction the equal protection of the laws." International treaties require the United States to promote "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion" (59 Stat. 1045–1046). Each of these fundamental requirements of our Federal system is violated when a lynching occurs. A lynching substitutes private arbitrary mob rule for the republican form of government, with its safeguards of due process and equal treatment. The arbitrary meting out of "justice" by one set of citizens to another replaces the republican form of government with a rule of terror.

State participation in this replacement is essential to its effectiveness. What happens is that the machinery of the State, or part of it, creates the conditions which permit the functioning of these private governments. It does so by inaction and acquiescence even where it does not do so by direct participation. It thereby becomes, at the least, a silent partner to the lynching and gives the reality of State authority to the direct participants.

It is no accident that lynchings occur with official condonation and assistance. They occur where the local community is unwilling to accord to underprivileged groups the equal rights which our Federal Constitution guarantees. The purpose is to keep the weaker group "in its place" by the imposition of special punishments and penalties applicable only against that group. Since that cannot be done through the official government, because of the restrictions of our National Constitution, the official government adbicates to the mob. The latter then achieves the desired unconstitutional invasion of private rights.

There can be no question as to the moral as well as the legal duty of the Federal Government to prevent such subversion of constitutional principles. There would be little point to a Federal Constitution containing restraints on the action of States, as ours does, if the National Government refused to enforce those restraints.

3. The need for Federal action

The objections to these bills are, at best, highly technical. The bills are aimed at conduct which is universally condemned. Only an artificial and unrealistic refusal to recognize that lynchings are more than mere illegal resorts to force can be offered as a ground for keeping the Federal Government out.

The bills are not aimed at any one area. They are not designed to impose the legitimate moral code of one part of the union over the legitimate moral code of another. The bills are aimed at lynching. That is a proper target for action by any government. If Federal action is needed to prevent that evil, it is justified. If it is not needed, no harm can be done by passage of these bills.

Actually, of course, Federal action is needed. The existence of statutes in every State making lynching a crime is irrelevant. It is what the State and its agents do that counts, not what they say (*Screws* v. *U. S.*, 325 U. S. 91 (1945). See also Hale, Robert L., Unconstitutional Acts as Federal Crimes (16 Harvard Law Review 65, 78–92 (1946)).

A series of peculiarly revolting lynchings took place during 1946 which led to the creation of the President's Committee on Civil Rights. A primary task of that committee was to study those incidents. It was also asked to study the steps which were taken and the steps which were not taken to redress the wrongs done. The unanimous conclusion of the 15 committee members eliminates all doubt as to the need for Federal action. The committee's report documents the widely held belief that local forces of law and order are too frequently inadequate to protect national constitutional rights. The committee said (Report, p. 23):

"The communities in which lynchings occur tend to condone the crime. Punishment of lynchers is not accepted as the responsibility of State or local governments in these communities. Frequently, State officials participate in the crime, actively or passively * * *. Condonation of lynching is indicated by the failure of some local law enforcement officials to make adequate efforts to break up a mob. It is further shown by failure in most cases to make any real effort to apprehend or try those guilty."

The committee concluded that the Federal Government has the power and duty to step in in such situations. It specifically recommended passage of a Federal antilynching law.

4. Comparison of the three bills

I turn now to consideration of the terms of the three bills before the committee. Since S. 1465 is for the most part an elaboration of S. 42, I shall limit myself to discussion of S. 1465 and S. 1352.

S. 1352 declares that the right to be free of lynching is a Federal right. It defines lynching as violence by two or more persons against any person or his property because of race, creed, color, national origin, ancestry, language, or religion, or violence against persons or property with the purpose of imposing punishments not sanctioned by law. Participation in a lynching is made a crime as is failure on the part of public officials to prevent a lynching.

S. 1465 creates no Federal right. The definition of lynching does not include violence against property. The criminal provisions apply only to public officials responsible for lynching by action or inaction.

Both bills contain provisions making local government subdivisions where lynchings take place liable in damages to the victims or their next of kin. Both require the United States Attorney General to institute investigations when information about reported lynchings is submitted to him.

The chief differences between the two bills is that S. 1352 rests on broad jurisdictional grounds and consequently applies to all persons participating in or aiding lynching. The penalties of S. 1465 apply only to State officers or employees. The broader coverage of S. 1352 is both necessary and proper. It rests on the findings of section 1 of that bill that "A State deprives a person of life, liberty, or property without due process of law and denies him the equal protection of the laws when the State's inaction has the effect of a discriminatory withholding of protection," and that condonation of lynching by failure to punish "gives the color and authority of State law to the acts of those guilty of the lynching, punishment, or other denial."

These findings are not technical. They are a realistic description of what actually happens when a lynching takes place. Whether State officials conduct or merely condone lynchings, the underlying official policy, the effect on the victim, and the effect on the public are the same. State officials cannot escape responsibility for violence committed within their jurisdiction by pleading that they did not do their duty.

The President's Committee on Civil Rights specifically recommended that Federal anti-lynching laws cover "action by either public officers or private persons meting out summary punishment and private vengeance upon a person because of his race, color or religion." (Report, p. 158). It made this recommendation only after a careful study of the necessities of the situation and the scope of the powers of the Federal Government.

The Supreme Court has held that a State violates constitutional guaranties where, by inaction, it fails to punish improper invasions of property rights. *Truax* v. *Corrigan*, (257 U. S. 312 (1921)). No reason appears why the Supreme Court should reach a different result where the right invaded is the right to life itself.

There are other differences between the two bills which I shall not discuss here. Generally the American Jewish Congress believes that the provisions of S. 1352 are better designed to meet the problem of lynching in all of its ramifications. We therefore support that bill without reservation.

5. Suggested changes in legislative findings

We wish to suggest a few changes in the legislative findings in S. 1352.

As I have indicated, the republican form of government ceases to exist when mob rule takes the place of civil government. Federal action to prevent lynching is therefore an appropriate device for fulfillment of the constitutional mandate that "The United States shall guarantee to every State in the Union a republican form of government." (Art. IV, sec. 4.) Hence we make the following suggestions:

First: Adding to section 1 of S. 1352 a fourth paragraph as follows:

"(d) Where a State fails to exercise its police powers in a manner which protects all persons equally without discrimination because of race, creed, color, national origin, ancestry, language, or religion, or permits persons not expressly designated as its agents to punish any person within its jurisdiction for crimes or alleged crimes, without trial or other due process of law, and condones such conduct by participating in or facilitating such conduct or by failing to punish either those of its officials who permit such conduct or those guilty of the conduct, the State fails to maintain a republican form of government."

Second: Adding to section 2 of S. 1352 a fourth paragraph as follows:

"(d) To guarantee to every State in the Union a republican form of government."

The report of the President's Committee on Civil Rights, as well as testimony given at this hearing, demonstrates that the evils described in general terms in

the present findings have frequently occurred in the past. The findings should so state. We therefore suggest two further changes.

Third: Substitution of the following language for the last sentence in the first paragraph of section 1 (a) of S. 1352:

"Deprival by a State of life, liberty, or property without due process of law and denial by a State of equal protection of the laws can be and has been accomplished by inaction as well as by action, by discriminatorily withholding protection as well as by affirmative discriminatory action. Failure on the part of a State to use its police powers to prevent or punish acts directed against members of a racial, religious, or national group although such acts are declared to be illegal by the laws of the State and are punished when committed against members of other groups constitutes such deprival or denial by the State."

Fourth: Addition of the following language at the end of the third paragraph of section 1 (a) of S. 1352:

"Condonation by the State has taken the form of cooperation by State officials in the illegal acts of private individuals, failure by State officials to give protection to persons within the State's jurisdiction or within the custody of State officials, failure to apprehend offenders, failure to institute criminal proceedings against them, discriminatory selection of juries, and other forms."

Mr. ARENT. I should like to incorporate sections in my actual statement.

The American Jewish Congress was organized in part to—

help secure and maintain an equality of opportunity for Jews everywhere, and to safeguard the civil, political, economic, and religious rights of Jews everywhere.

Our movement recognizes fully that equality of opportunity for Jews can be truly secured only in a genuinely democratic society.

Democracy is jeopardized wherever the orderly processes of government are set aside. Experience here and abroad has shown that the lives and safety of all minorities are in danger whenever strong-arm squads are permitted any leeway. The three bills, S. 42, S. 1352, and S. 1465 are designed to protect and extend our constitutional system of due process and equal protection. As Americans who fervently wish to see that system maintained, we support these bills.

Senator EASTLAND. Of course, I agree with the statement that a strong-arm squad not be permitted leeway, but take the situation in Chicago in 1927, when we had the St. Valentine's Day massacre. You had a great number of gangs there. Are you saying that the Federal Government should go in those States and try to exercise police power because strong-arm squads have committed murder?

Mr. ARENT. I am saying, Senator, where a problem of mob violence has persisted——

Senator EASTLAND. I want to get an answer to my question.

Mr. ARENT. In the absence of adequate State enforcement, I can conceive of a situation where the Federal Government should step in.

Senator EASTLAND. Of course, we have not had adequate State enforcement of law in murder in the State of Illinois, as you well know. Do you think we should have a Federal statute to punish for murder, and that the Federal Government should supersede the Government of the State of Illinois?

Mr. ARENT. I accept the basic principle that the primary responsibility shall be that of the State. My second step would be to say that wherever the problem has become a persistent one, one of serious national implications, the Federal Government must then take steps.

Senator EASTLAND. Take a series of gang killings. Take the "purple gang" in New York and Detroit, which has had active criminals for years that have never been apprehended.

Senator FERGUSON. I would have to correct "have never been apprehended." We have convicted them and put them in prison.

Senator EASTLAND. Take the "Capone gang."

Mr. ARENT. I would favor a Senate investigation to determine whether the absence of enforcement there is such as to require Federal action, just as Federal investigation——

Senator EASTLAND. Then you think that if they have not been convicted, the Federal Government has the power, under the Constitution, to punish for the crime of murder, to go in a State and exercise police power against murder? Is that your contention?

Mr. ARENT. I maintain that as a constitutional matter, if there is persistent State inaction and inadequate enforcement, the Federal Government does have that power. I maintain, however, that the Federal Government ought to consider and question actively in those things only after investigation which points out the national significance of the situation.

Senator EASTLAND. Of course a murder is of national significance.

Mr. ROBISON. I would like to suggest one other consideration.

Senator EASTLAND. I was asking him some questions, not you. Just wait a minute, please.

Mr. ARENT. I believe that murder can become nationally a problem which might require——

Senator EASTLAND. That is, all lynching is murder?

Mr. ARENT. Right; but it is a form of murder which has had the condonation of large segments of the population.

Senator EASTLAND. I do not think that statement is true. I think that statement is utterly false. I do not think you know anything about it.

Mr. ARENT. And it is a form——

Senator EASTLAND. How many lynchings did we have last year in the United States?

Mr. ARENT. Offhand, I can't give you the number. I vaguely recall the number is six.

Senator EASTLAND. It was one, was it not? Would you state that lynchings are condoned by a majority of the people? I say that statement is utterly false.

Mr. ARENT. Another ground of distinction between the ordinary murder situation and the lynching situation is that the lynching situation usually represents an action taken on grounds of discrimination because of race, color, or sex.

Senator EASTLAND. Why do you say it does? Explain that statement. You say that it usually does. How do you know that that is true?

Mr. ARENT. Because over the long history of the thing it has been primarily directed against the colored population.

Senator EASTLAND. In rape cases, is it not true that, in terms of percentage, based upon the crime of rape committed by a white man and that by a Negro, the lynchings are as great in one case as in the other?

Mr. ARENT. I think in terms of percentage——

Senator EASTLAND. Is that not true?

Mr. ARENT. I am not saying there aren't occasional lynchings of whites.

Senator EASTLAND. If that is true, how could it be based on discrimination because of race, when white men are lynched for it, too?

Mr. ARENT. Could I have my colleague answer that?

Mr. ROBISON. In the Louisiana case the men lynched were not in any way implicated in any crime.

Senator EASTLAND. Of course, that was murder.

Mr. ROBISON. It was murder which followed the usual lynch pattern, Senator. It has been recognized not only by the group that is testifying now, but by an outstanding group that have studied the matter very thoroughly recently, the President's Committee on Civil Rights, that the purpose of lynching is designed to suppress a particular portion of the population.

Senator EASTLAND. Is that true? You have white men who are lynched for it, as many in proportion as commit the crime.

Mr. ROBISON. I beg your pardon, Senator. There have been no lynchings of white people in recent years. The number of Negroes involved in rape in recent lynchings has been very small.

Senator EASTLAND. Yes, I think that is true.

Mr. ROBISON. There is no issue of rape involved in the Minden case.

Senator EASTLAND. What was involved in the Minden case?

Mr. ROBISON. One Negro, I believe, was charged with some form of theft. I am not sure what it was. Apparently it was not considered a very serious matter because he was released in the cognizance of a single person.

Senator EASTLAND. Who told you that? I say it was based on theft. Who told you that?

Mr. ROBISON. It is all set forth in the report of the President's committee.

Senator FERGUSON. Would it be necessary under these laws as proposed to prove that the lynching was caused because of prejudice.

Mr. ROBISON. Under one part of it, I believe. One of the two bases of the section which defines lynching does refer to race, religion, and so forth.

Senator FERGUSON. But do you not think the bills go further than that and define what a lynching is? It would not make any difference whether the cause was because of prejudice or because it was just an attempt to carry out the law?

Mr. ROBISON. That is right.

Senator FERGUSON. If you did not do that, would it not be difficult on occasions to prove that so-called prejudice or malice?

Mr. ROBISON. That is really irrelevant, Senator. The basic approach of the bill is that it is designed to correct a situation where the State permits private individuals to take the law into their own hands.

Senator FERGUSON. I can see some cases where you could prove it but in other cases it may be very difficult if you had to use a local jury, even in a Federal court that has a wide jurisdiction. It may be difficult to prove that one item of prejudice.

Mr. ROBISON. The proof is always difficult to make in any case.

Mr. ARENT. Basically it comes down to this: Lynching is a form of violence which does more to intimidate the American people out of exercising their proper constitutional law, which does more to make law-abiding people fearful and insecure, than any other form of vio-

lence. It does more than any other form of violence to disgrace any nation in the eyes of the world.

Senator FERGUSON. It shows a lack of law and order.

Senator EASTLAND. Of course, it shows lack of law and order.

Mr. ARENT. It makes the fact extremely important that this Government stand up firmly and bolster State enforcement, in such a way as to show the world that we mean business when we say that is a country of law and order.

Senator EASTLAND. You take the Minden, La. case. Frankly, I was in Minden, La., when that happened. It was a terrible crime. The people who did it should have been punished, but the statement that one of the men charged with that crime was accused of petty theft is totally wrong. I think we should confine ourselves to the facts when we discuss a case like that.

Mr. ROBISON. When I referred to the Minden, La., incident, I meant the Monroe, Ga., case.

Mr. ARENT. Mr. Chairman, I worked for about 2 years in the Civil Rights Section of the Department of Justice when that section was first being organized and helped to draft the blueprint of Federal jurisdiction at that time. In the enforcement of the Federal jurisdiction, we found that there were a great many situations where the mere threat of Federal action was sufficient to prevent very unfortunate outbreaks of lawlessness, where Federal investigation served a very sound purpose in supporting the better elements of the community in putting teeth into a situation where the population had become accustomed to indifference.

Senator EASTLAND. I think you are right there. That is correct.

Mr. ARENT. We found in the matter of lynching that the existing statutes were quite inadequate, and since the Screws case came along and required willful violation of a known Federal or constitutional right, it has been even more difficult to put a genuine threat of Federal protection of the lives of men against mob violence. We think that bills of this sort, any one of the three, although we agree with Mr. Houston in favoring the broader bill, any one of the three will serve to make specific the Federal crime of willfully permitting people to be lynched, willfully participating in the lynching of people, and in that way will permit a direct test of Federal authority in the field.

I think the warning which it hands out, the certainty of action and punishment, is what counts. It does not matter that you have a death sentence for murder and a 20-year maximum for lynching. If they know they are not going to be prosecuted for murder or convicted for murder, but they know there will be a thorough investigation by the very competent FBI of a violation of a Federal right, followed by a presentation to a Federal grand jury and a sincere effort at prosecution, whether there is conviction or not—it is the certainty of Federal action, the fear of genuine, impartial enforcement of law and order that is going to make a Federal lynching bill a bulwark of law and order in this country.

Senator FERGUSON. Have you examined the two opinions of the Attorney General? In one of them he seems to hold or claim that the provision for civil liability against the State or municipaility is unconstitutional.

In the other one he seems to think that the provision providing for

punishment of individual lynchers is unconstitutional. Have you examined those?

Mr. ARENT. I have not, sir. I have not been with the Department of Justice for the past several years.

Senator FERGUSON. He raises the unconstitutionality in the one and does not in the other, and then on another point he says the other bill is of doubtful constitutionality.

Mr. ROBSION. Were those submitted to this committee?

Senator FERGUSON. Yes, and I made them a part of the committee record the other day. I wish you would go over them. I may want to make a written statement in relation to them.

Mr. ARENT. I might say this: There are competent students of constitutional law, men in the civil rights section, men out in private practice, and in the universities, who are satisfied that there are very sound bases for the constitutional support of even the Morse-Wagner bill, the broader bill.

Senator EASTLAND. Which cases do you rely on?

Mr. ARENT. In terms of State inaction, I think two actions against Corrigan.

Senator EASTLAND. Which case is that?

Mr. ARENT. That is a labor case (257 U. S. 312).

Senator EASTLAND. Would you please give me the style of the case?

Mr. ARENT. *Truax* v. *Corrigan.* However, there are in a recently published book, reviewing the history of civil rights, Federal protection of civil rights, citations to a good many law review articles which go into these questions.

Senator EASTLAND. Law review articles?

Mr. ARENT. And which assembles authorities. In other words, I could not without taking a day's time of this committee explore completely the constitutional questions involved. I simply wanted to make the point that there is respectable authority for the bill, respectable analysis and citations to support it, both under the fourteenth amendment and under the republican form of government.

Senator EASTLAND. I would like you to file a brief on the constitutionality.

Senator FERGUSON. You might want to appear on the 27th when the question of constitutionality will be raised.

Is that not right?

Senator EASTLAND. That is right.

Senator FERGUSON. Mr. Houston has gone, has he not? He might want to know about that date, also, and he might want to be here to listen to the argument, and he may want to file a brief later. That is what I suggest that you might want to do.

Mr. ARENT. However, the great public good that can be accomplished in my judgment by adopting a bill like the Wagner-Morse bill lies in the fact that the principle of law and order is established and put in a form where the Federal jurisdiction can be properly tested, where all these arguments which have been advanced and which have resulted in a lot of loose discussion as to constitutionality can actually be brought before the court and tested.

What harm can be done by having this bill on the books with some constitutional questions, but respectable analysis behind the supporting position? When the bill as it stands in no way impairs the rights of any person, any decent law-abiding person. It merely stands as a

threat to the man who is willing to join a mob and commit violence, murder.

While on the one hand it cannot harm anybody to adopt such a bill, on the other hand it gives you a chance to establish the proper constitutional principles, and there is a mighty good severability clause in the Wagner-Morse bill which, if the whole bill is not constitutional, would permit the constitutionally sound parts to remain.

I would like to address myself for a little while, if I may——

Senator FERGUSON. Of course, you realize when you take a bill to the floor, it is well to have it, in the opinion of those who are for it, constitutional.

Senator EASTLAND. If we followed that premise, it would amount to asking every Member of the United States Senate to violate his oath of office.

Mr. ARENT. I emphasized strongly as I could——

Senator FERGUSON. To be reasonably certain that is constitutional?

Mr. ARENT. There is a reasonable authority on its constitutionality and I believe from such work that I have done in the field that I am quite confident that one of the several lines of analysis will stand up.

Senator FERGUSON. In other words, you are reasonably certain that the law is constitutional.

Mr. ARENT. Quite right. I am pointing out even if certain aspects of it were ultimately found to be unconstitutional, you would not have harmed anybody in the interim by putting the question to the test. It is unlike certain situations where you are controlling business or otherwise interfering with a man's lawful life on a proposition which has some doubtful constitutionality. Here you are simply setting up a standard of decency which no respectable individual, no decent individual, would attempt to violate.

Although I regard the fourteenth amendment as the basic support for this legislation and regard the international treaty aspect as being an interesting possibility, I should like to discuss, since Mr. Houston discussed the other so fully, the constitutional guaranty of republican form of government as a third alternative in supporting the constitutionality.

A lynching substitutes private arbitrary mob rule for the republican form of government, with its safeguards of due process and equal treatment. The arbitrary meting out of "justice" by one set of citizens to another replaces the republican form of government with a rule of terror.

State participation in this replacement is essential to its effectiveness. What happens is that the machinery of the State, or part of it, creates the conditions which permit the functioning of these private governments. It does so by inaction and acquiescence even where it does not do so by direct participation. It thereby becomes, at the least, a silent partner to the lynching and gives the reality of State authority to the direct participants.

Senator EASTLAND. Suppose in the case of several lynchings there is an investigation in the case by the State authority and the matter is submitted to a grand jury. In some of those cases no indictment is returned, and in others there is an indictment and trial and the accused turned loose. Would the State become a party then by inaction?

Mr. ARENT. I think the policy of the Department of Justice in the past on that point indicates the proper dividing line. Where there has been a genuine demonstration of State activity in an effort to punish the person.

Senator EASTLAND. They investigate it and submit it to a grand jury.

Mr. ARENT. Then as a matter of administrative policy the Federal Government would not interfere.

Senator EASTLAND. I am not speaking of the Constitution now. Under the republican form of government clause, would not the State be a party to it if that were done?

Senator FERGUSON. Of course, any one of these laws makes that a Federal crime. No matter what the State crime is and no matter whether they were convicted under the State law, they could still be convicted under the Federal law. It would not be double jeopardy.

Mr. ARENT. I recognize that, but I also recognize that the Federal Government does not exercise many of the powers which it has because a local authority is doing an effective job and it is not necessary to invoke the Federal powers. The powers are there, though.

Mr. ROBISON. In the situation which Senator Eastland suggested, the fact remains that there has been a lynching, there has been violence, a violation of law, and no one had been convicted. I think on any standard the State has failed in that situation, Senator. The Federal Government must then consider whether or not it can——

Senator EASTLAND. Then we would set up a Federal police code for all crimes.

Mr. ROBISON. We only set up Federal police courts where the experience shows the problem has been created.

Senator EASTLAND. Under the republican form of government, if what you were saying is true, we would set up a Federal police code to supersede the police powers of the State.

Mr. ROBISON. Only where the situation is such as to put the republican form of government in jeopardy.

Senator EASTLAND. I said on conditions that I have outlined you think they could do that for larceny or for any other crime where there has been no conviction?

Mr. ROBISON. No. The kind of crime we are discussing here is lynching.

Senator EASTLAND. I understand it is lynching, but if you can for lynching, why can you not do it for other crimes?

Mr. ROBISON. Because lynching jeopardizes the due process of the entire constitutional system of the State. The others do not.

Senator EASTLAND. Lynching is just murder.

Mr. ROBISON. Lynching is not just murder. It is more than murder.

Senator EASTLAND. What is it?

Mr. ROBISON. Lynching includes not only murder, but includes other forms of different physical activity which aims at substituting——

Senator EASTLAND. What?

Mr. ROBISON. They are crimes which are aimed at substituting for the normal processes of the Government the rule of private groups.

Senator FERGUSON. In other words, it sets aside the republican form of government which is due process of law.

Mr. ROBISON. And the mob becomes the court. It becomes mob law, which has no trier.

Senator EASTLAND. That is true of every gang.

Mr. ARENT. That is why my answer to Senator Eastland, I think, would be somewhat different. The republican form of government principle does not deal with the situation where the State authorities are maintaining law and order and presenting honest, good faith cases to the jury.

Senator EASTLAND. What is the difference between this and any other gang killing?

Mr. ARENT. Because in the case of lynching I think there is a historical foundation for a Federal determination that in many instances the State fails to maintain the essential elements of republican form of government in providing a fair trial and protection for those people.

Senator FERGUSON. Have you ever known a gang killing to be, let us say, an attempt to carry out the enforcement of law or punshment?

Senator EASTLAND. Certainly.

Senator FERGUSON. As a rule, gang killing is for other purposes than an attempt to carry out the law.

Senator EASTLAND. That is not the way I read a lot of them.

Senator FERGUSON. You mean that they are trying to punish a man, and that is the reason they kill him in these gang killings?

Senator EASTLAND. Surely.

Senator FERGUSON. You mean punish him because he has committed a crime?

Senator EASTLAND. Surely. Punish him because he is selling liquor in the area of one gang.

Senator FERGUSON. It is not to punish him because he is selling it as a crime. It is because he is taking the business away from them.

Senator EASTLAND. That is true, of course, but one is a crime and the other is a crime. I do not see the difference. Both of them are crimes.

Senator FERGUSON. A lot of these lynchings are tried to be put on the plane that they are doing it to enforce the law.

Senator EASTLAND. I have never known such a thing.

Mr. ROBISON. That is the justification of it.

Senator EASTLAND. I do not think the Senator could say there was ever a lynching that was put on the plane that they were trying to enforce law. Of course, the men know they are not enforcing the law. They are violating the law, not holding themselves up as a court.

Senator FERGUSON. But they do not want to wait until the regular process goes through. They want quick law.

Senator EASTLAND. It is just a case of murder. That is all it is.

Senator FERGUSON. There is not any doubt about it.

Mr. ROBISON. There is no question it is murder.

Senator FERGUSON. It is an exaggerated murder.

Senator EASTLAND. If article 4 of the Constitution applies to lynching, it would apply to any other crime if our Supreme Court is judicially honest, and frankly I think that all these cases must be based upon the assumption that a majority of our court, as now constituted, is not judicially honest and will not determine the law. I think Senator Morse's statement about the changing constitution yesterday was an example of it.

Mr. ARENT. Senator Eastland, I might call your attention to the fact that nearly all the research that has been done in the legislative

history of the fourteenth amendment shows that it was originally intended by a majority of Congress to make that amendment apply to individual violence against a person's civil liberties.

Senator EASTLAND. I do not know about that.

Mr. ARENT. I suggest that Flack's book be read.

Senator EASTLAND. Who is Flack?

Mr. ARENT. He is a rather obscure professor somewhere now, but he did an excellent thesis which is in print in the libraries, analyzing the congressional debates and all the legislative history there.

Senator EASTLAND. What do the courts say? That is the test, as I understand.

Mr. ARENT. This bears upon your last proposition, the civil-rights cases. Congress, in accordance with that understanding, adopted certain civil-rights acts after the adoption of the fourteenth amendment, which made no distinction between State action and individual lawlessness. The Supreme Court in the civil-rights cases and other cases subsequently cut that down very considerably.

Senator EASTLAND. Declared those acts unconstitutional.

Mr. ARENT. When you say the Supreme Court would have to be intellectually dishonest to expand the scope of the Federal jurisdiction, you are raising the question about the honesty of the court.

Senator EASTLAND. If they should follow the precedent.

Mr. ARENT. I think they should examine the question right from the beginning on its legislative history and its constitutional interpretation. We found in the civil-rights section this, that there were a great many fields of Federal activity even within the limitations of the civil-rights case which had been overlooked and ignored.

Senator EASTLAND. What did the court hold in the Slaughterhouse case?

Mr. ARENT. As I recall, that essentially the fourteenth amendment was directed against State interference with civil rights rather than individual.

Senator EASTLAND. Not a violation of individual rights by an individual. That has been adhered to by the court from that time down to this, as a matter of fact?

Mr. ARENT. There have been some situations where individual actions have been protected in fields of rights called Federal rights. The interesting thesis has been advanced that the right to a fair trial in the State court which can be reviewed by the Federal courts under the Federal Constitution is a Federal right, and if that is true, that would be protected against individual violence as well as State violence.

In other words, time and again the Supreme Court reverses a conviction in the State court because the elements of due process have not been observed. If a man is seized from jail and disposed of summarily by a mob, he thereby loses a right to the fair trial in the State courts which the Constitution guarantees him and which the Federal courts have time and again accepted the responsibility to step in to enforce.

Senator EASTLAND. My statement about the Supreme Court was not only based on this, but it was based on the restrictive covenant suit, the Oklahoma case. It is all based on the ground that the court is not judicially honest. That is my judgment. I think that is the assump-

tion that they always go on. Whether they are or not, I have some very strong opinions. I do not know.

Mr. ROBISON. Any action which is taken under color of State authority is action which is subject to the restraints of the Constitution. The language of the civil-rights cases in that respect is quite strong.

It appears at several points in the opinion. There are other decisions of that very period, not by the present Supreme Court, which also make that clear that where the State fails to act, the Federal Government not only can but should act. One such case is *Strauder* v. *West Virginia* (100 U. S. 303).

In any case, I think it is clear that Congress in enacting legislation now, regardless of what it thinks of the Supreme Court, has to recognize the law as established by the Supreme Court. The line of decisions of the Supreme Court both at the time of the civil-rights cases and at the present make it clear that it is the duty of the Federal Government to act now.

Senator EASTLAND. Your statement is that Congress must do what?

Mr. ROBISON. Recognize the law as it is established by the Supreme Court.

Senator EASTLAND. If we did that, then, of course, this bill would be killed here in the committee.

Mr. ROBISON. Oh, no.

Mr. ARENT. We don't admit that. We hold that there is nothing in the existing law which declares the basic principles of the bill unconstitutional.

Senator EASTLAND. You cannot support that statement in the face of the case that he just cited, *Strauder* v. *West Virginia*, and the Slaughterhouse case. If we follow his premise, of course the bill should not get to the floor.

I agree that when the Supreme Court announces the law, we must obey it.

Mr. ARENT. The precise problem has never been directly and completely explored by the Supreme Court, and we think an exploration by this court or its predecessor court or the court succeeding it would probably and very likely sustain the constitutionality of this bill.

I would like to read a proposed additional finding which we would like to recommend for the Morse-Wagner bill——

Senator EASTLAND. Of course, if they sustain the constitutionality, that would not mean in reality it was constitutional.

Mr. ARENT. You are not recognizing the authority of our judicial system, Senator.

Senator EASTLAND. I recognize it. I have my own opinion, of course, but of course I would recognize it. I have not much confidence in the judgment of our Supreme Court. I do not think the bar of this country has.

Mr. ARENT. We suggest an addition to section 1 of Senate bill 1352 as follows:

Subsection (d):

Where a State fails to exercise its police powers in a manner which protects all persons equally without discrimination because of race, creed, color, national origin, ancestry, language, or religion, or permits persons not expressly designated as its agents to punish any person within its jurisdiction for crimes or alleged crimes, without trial or other due process of law, and condones such

conduct by participating in or facilitating such conduct or by failing to punish either those of its officials who permit such conduct or those guilty of the conduct, the State fails to maintain a republican form of government.

Your Honor, I have nothing more to say other than that our organization, which has long been interested in the problems of minorities and the problems of this democratic form of government, in which minority and majority can live together peacefully and safely, believes that a great deal of good can be accomplished by a Federal Anti-lynching bill.

Senator EASTLAND. Who is it in this country who is not a minority?

Mr. ARENT. Fine. All the more reason, then, for showing the firm stand of this Nation against a form of violence which has been a disgrace to us in the eyes of our own citizens and in the eyes of the world.

I thank you.

Senator EASTLAND. I think time has cured it. We do not have any lynchings now.

Senator FERGUSON. Thank you, gentlemen. We will recess until 10 o'clock on the 27th.

(Thereupon, at 12 noon, the committee was adjourned, to reconvene at 10 a. m. Tuesday, January 27, 1948.)

CRIME OF LYNCHING

MONDAY, FEBRUARY 2, 1948

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

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

Present: Senator Ferguson, Revercomb, and Eastland.

Present also: Senator Stennis, Robert B. Young, committee staff.

Senator FERGUSON. The committee will come to order.

We will hear from you first, Senator Stennis.

STATEMENT OF HON. JOHN C. STENNIS, A UNITED STATES SENATOR FROM THE STATE OF MISSISSIPPI

Senator STENNIS. Mr. Chairman and gentlemen of the committee. I appear this morning as a witness. I have a memorandum here, but it is not especially a prepared statement. I have some authorities that I base some of my legal reasoning on, but it is not a brief. And I would like permission to file a brief on these legal questions which I think are very vital.

Senator FERGUSON. How long would you desire to have to file that?

Senator STENNIS. A week?

Senator FERGUSON. The committee is anxious to get to work. If you can make it in less time than that, we would appreciate it.

Senator STENNIS. I will try. It will not be an extensive brief.

I am going to direct my remarks, so far as they pertain to special provisions of the bill, primarily to S. 1352, as I consider it the most far-reaching bill of the three now before you.

I want to emphasize to you, gentlemen, that my appearance here in opposition to these bills is not perfunctory in the least. I have a very firm conviction that bills of this nature are without congressional authority, so far as their enactment is concerned.

I think they are directly an invasion of principles of local and State government, and I believe, with all deference, that they are entirely unconstitutional.

I know the motives and purposes of the authors are very high and are dictated by the highest considerations, but I do not think that that gives authority to the Congress to enact such legislaion.

I look upon the Federal Government as being the creature and upon the individual States as the creator. We have no authority to pass any

law unless there is strong basis for that authority found in the words, or by reasonably necessary implication therefrom, of the clauses of the Constitution.

I do not believe we would have ever had a great government without this separation of powers that I speak of. I do not think the Federal Government would ever have been founded without the separation of powers. And I do not believe that our Government can or will long endure when that division of State and Federal power is ignored.

I therefore strongly feel that I speak for both the Federal and the State Governments when I oppose this measure.

Now, gentlemen, my personal background is along this line, if you will pardon me for the personal remark: I am a lawyer. I have been in the profession for 20 years. I spent 16 years of that time in the courtroom. I served 5 years as a district prosecuting attorney. I served 11 years as a circuit judge. That is the presiding officer of a court of unlimited civil and criminal jurisdiction. It is next to the highest court in the State.

During those 16 years, I had the most intimate and direct and continuous contact with court officials, county officers, jurors, rank-and-file citizens, and those charged with crime, as well as those convicted of crime. I have taken part in the trials of people, as prosecuting attorney, and also presided over trials, that involved the red man, the black man, and the white man.

As I say, I have spent 16 years in that close, intimate contact with the problems and with the affairs of State government. And I believe that for the area that I come from, I do know something about the mind and the attitude of the people toward law, and toward law enforcement.

I had many cases of considerable interest that presented unusual problems, and I have been up the hill and then down the hill many times on all those things.

My deliberate conclusion is the strength of our Government does not rest in Washington. The real spirit of our Government is found throughout the 3,000 or more counties and county courthouses of our great Nation. That is where the people come in contact with their affairs, with their problems, and they try to find the solution. And it is there they feel their personal responsibilities.

I think this law would put all those State laws and municipal laws into more or less of a strait-jacket. I have found that the strongest appeal we have to the individual citizen is an appeal to him to do his part in his local unit of his government.

I believe that when we take this responsibility away from the local citizen and, further, when we seek to brand his community as criminal and impose a penalty thereon because of some crime therein, we are striking at the very vitals and at the very heart and soul of our democracy.

Now, that is what this bill does.

Gentlemen, with all due deference, I was shocked at the reading of that section of this bill that seeks to impose a criminal fine on a political subdivision of a sovereign State of the United States.

Senator FERGUSON. Senator, it has been suggested that, as we have out-of-town witnesses, and because of the session at 12, we might proceed with their testimony and you might hold the remainder of your testimony until after they are through.

Is that all right with you?

Senator STENNIS. That is all right with me.

Senator FERGUSON. Mr. White, will you come forward, please?

You may proceed, Mr. White.

STATEMENT OF WALTER WHITE, EXECUTIVE SECRETARY, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, WASHINGTON, D. C.

Mr. WHITE. Mr. Chairman and gentlemen of the committee, my name is Walter White, and I am secretary of the National Association for the Advancement of Colored People.

I appear here today on behalf of the national office, and the 1,627 branches, youth councils, and college chapters of the association, with a biracial membership of one-half million, in support of S. 1352.

The association has for many years been opposing lynching as a grave danger to the democratic way of life. We have investigated lynchings. I myself have had the experience of investigating some 41 lynchings, and some 12 race riots in the United States, and I have done some writing and speaking on the subject.

We consider lynching to be the most dramatic symptom of a basic societal sickness, but we consider it only one of the serious symptoms of a basic malady. Some of the others are the lynching of the democratic process on the floor of the United States Senate itself by means of filibuster. Another is the disfranchisement of persons because of race or creed or color or economic circumstance, by means of poll tax, by the terriorism of the lynch mob, by the so-called white Democratic primary, which our Supreme Court has recently outlawed.

Another is job discrimination, or economic lynching.

The fourth is educational inequality based on race, or the mob murder of the human mind.

And fifth is the caste system which crucifies the human spirit of an American because he belongs to a different race, or worships his God in a different manner or a different place, or was born through no choice of his own outside of the United States.

We charge that Ku Kluxery has dominated the Congress for generations, but we are glad to see a new climate of public opinion swiftly coming into being against the harm which mob violence does to the democratic way of life.

There is, for example, the report of the President's Committee on Civil Rights which unequivocally recommends the enactment of Federal legislation against lynching.

I would like to read one paragraph, beginning at page 157, which goes as follows:

> The Committee believes that to be effective such a law, namely, an antilynching act, must contain four essential elements: First, it should define lynching broadly. Second, the Federal offense ought to cover participation of Federal officers in

a lynching, or failure by them to use proper measures to protect a person accused of a crime against mob violence. The failure or refusal of public officers to make proper efforts to arrest members of lynch mobs and to bring them to justice should also be specified as an offense.

Action by pivate persons taking the law into their own hands to mete out summary punishment and private vengence upon an accused person, action by either public officers or private persons meting out summary punishment and private vengeance upon a person because of his race, color, creed, or religion—these, too, must be made crimes.

Third, the statute should authorize immediate Federal investigation in lynching cases to discover whether a Federal offense has been committed.

Fourth, adequate and flexible penalties ranging up to a $10,000 fine and a 20-year prison term should be provided.

The constitutionality of some parts of such a statute, particularly those providing for the prosecution of private persons, has been questioned. The Committee believes that there are several constitutional bases upon which such a law might be passed, and that these are sufficiently strong to justify prompt action by the Congress.

That Committee, you will remember, was chairmaned by Charles E. Wilson, president of the General Electric Corp., and it had in its membership distinguished representatives of education, of the law, of labor, of racial and other minority groups, and of the church.

We believe that that recommendation is an exceedingly sound one, which ought seriously to be considered by the Congress.

Now, I would like also to call attention to this new climate of decent public opinion which fortunately is growing in this country and which will back such a measure.

I want to call attention to the attitude of the students of the universities of Oklahoma and of Texas, who have shown in unmistakable fashion that they favor the abolition of discrimination, and they favor the abolition of racial segregation as being in violation of all the tenets to which we give lip service.

And there also is the attitude of the young veterans, many of whom I talked with overseas, when I was there as a war correspondent during the war, who, having fought side by side with men of other races and creeds and colors, have learned to believe in democracy and who believe that it ought to be practiced here at home.

I think it is most notable that in Senator Stennis' State and Senator Eastland's State there have been a number of remarkable instances of this new awareness of the obligations of democracy on the part of young veterans, both white and Negro.

The old order, thank God, is passing. The very violence of some of the threats which have recently been made to secede from the Democratic Party of the Union itself is an omen of their coming defeat and an indication of their present fear that the days of bigotry have passed.

I should like also to urge consideration of S. 1352, the Wagner-Morse-Case bill, because of its international effect.

In north Africa in 1943, I saw leaflets which had been dropped by the Germans among the Arab tribes and among the native Africans, pointing out that there were lynchings and race riots in the United States as proof of the fact that the United States Government was a hypocrite when it said that it was fighting for democracy, while it permitted lynching to continue in the United States.

Later I saw in the Pacific, in Guam, posters which had been then put up all over the island and in other places by the Japanese, calling upon the natives there to drive out the "imperialist, bigoted, prejudiced American white man" and to drive on toward "Asia with Asia's own," in order to drive the white man out of the Pacific.

We think that such racism of that sort on the other side is just as vicious, but no more vicious than the racism which supports lynching and mob violence here in the United States. And we need to wipe out lynching, because, as the United States Army has recently shown, in Armed Forces Talk 210, which is a brief document that I ask the privilege of placing in the record——

Senator FERGUSON. It will be received.

(Armed Forces Talk 210 is in the committee files for scrutiny.)

Mr. WHITE. I want to call particularly your attention to section 6, which is headed "Predjudice Endangers World Peace." [See testimony of Charles Houston.]

Because that kind of thing continuing to happen here in the United States causes the two-thirds of the people of the earth who are not white increasingly to doubt our statements in America, when we say we believe in democracy, in Christianity, and in simple human decency.

We must recognize that the splitting of the atom has ended isolation forever, and that we have got to become the kind of people we say we want to be and the kind of people we say we are; that we do believe in justice, and we practice it toward all, irrespective of race, or creed, or color.

Now, there have been suggestions made to the NAACP that if we will consent to the dropping of the section providing for the punishment of lynchers, the bill can more easily be passed.

I want to say that we totally and unequivocally reject any compromise. Any proposal to eliminate the provision for the punishment of lynchers will make the bill, we believe, weak and ineffective. We would rather have no law at all than an emasculated and ineffective one. Because a weak bill would simply bring as much contempt for the power of the Federal Government as now exists toward the authority and the power of the several State governments.

We further contend that it is ridiculously and viciously misleading to say that the reduction of lynchings makes such a law unnecessary.

I ask permission to place into the record for the information of the committee, first, a statement giving the listing of lynchings and, second, an analysis of not only the lynchings, but the near lynchings which took place during the year 1947.

Senator FERGUSON. They will be inserted at this place in the record.

(The material referred to is as follows:)

Lynchings in the United States, 1921–46, [1] *by States and years*

	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930	1931	1932	1933	1934	1935	1936	1937	1938	1939	1940	1941	1942	1943	1944	1945	1946	Total
Alabama	2	3	2	-----	1	-----	-----	-----	-----	4	1	-----	5	2	6	-----	1	-----	-----	2	-----	-----	-----	-----	-----	-----	29
Arkansas	6	5	2	-----	1	3	3	-----	-----	-----	-----	1	-----	-----	-----	1	-----	-----	1	-----	-----	-----	-----	-----	-----	-----	23
California	-----	-----	-----	-----	-----	-----	1	-----	-----	-----	-----	-----	2	-----	1	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	4
Florida	5	5	7	5	3	9	2	-----	4	1	2	2	1	2	2	1	3	1	2	-----	1	-----	1	1	1	-----	61
Georgia	14	11	4	2	2	3	-----	-----	-----	7	-----	1	4	1	2	5	1	1	-----	2	2	-----	2	-----	-----	4	68
Illinois	-----	-----	-----	1	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	1	-----	-----	-----	-----	2
Indiana	-----	-----	-----	-----	-----	-----	-----	-----	-----	2	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	2
Kansas	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	1	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	1
Kentucky	1	-----	-----	1	1	1	1	-----	1	-----	-----	1	-----	1	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	8
Louisiana	5	5	1	1	1	2	1	2	-----	-----	1	1	4	2	2	-----	-----	1	-----	-----	-----	-----	-----	-----	-----	1	30
Maryland	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	1	-----	1	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	2
Michigan	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	1	2	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	3
Mississippi	13	8	5	2	6	4	7	5	2	3	3	-----	2	6	8	1	2	4	1	-----	-----	3	-----	2	-----	1	88
Missouri	1	-----	1	1	1	-----	1	1	-----	-----	1	-----	1	-----	-----	-----	-----	-----	-----	-----	-----	1	-----	-----	-----	-----	9
North Carolina	4	2	-----	-----	-----	-----	1	-----	2	1	-----	-----	1	-----	1	-----	-----	-----	-----	-----	1	-----	-----	-----	-----	-----	13
North Dakota	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	1	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	1
New Mexico	-----	-----	-----	-----	-----	1	-----	1	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	2
Ohio	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	1	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	1
Oklahoma	-----	2	3	-----	-----	-----	-----	-----	-----	1	-----	-----	-----	-----	-----	1	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	7
South Carolina	5	2	-----	1	-----	3	-----	-----	-----	2	-----	1	3	-----	-----	-----	-----	-----	-----	-----	1	-----	-----	-----	-----	-----	18
Tennessee	1	2	-----	1	-----	2	3	-----	1	-----	1	-----	3	1	1	-----	1	-----	-----	1	-----	-----	-----	1	-----	-----	19
Texas	6	16	2	1	-----	5	1	2	2	4	1	1	1	1	2	1	-----	-----	-----	-----	-----	1	-----	-----	-----	-----	47
Utah	-----	-----	-----	-----	1	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	1
Virginia	1	-----	1	-----	1	1	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	4
West Virginia	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	2	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	2
Total	64	61	28	16	18	34	21	11	12	25	14	10	28	16	26	12	8	7	4	5	5	6	3	4	1	6	445

[1] Based on supplements to Thirty Years of Lynching in the United States, 1889–1918, NAACP, New York, 1919.

Source: National Association for the Advancement of Colored People, New York 18, N. Y.

DEATHS AND SUSPECTED DEATHS BY LYNCHING, 1947

February 1947, Liberty, S. C.: On February 16, 1947, Willie Earle, Negro truck driver, was removed from Pickens County jail by a mob of more than 30 persons. Two hours later his body, ripped by knives and buckshot, was dumped near a rural slaughterhouse. Earle, an epileptic victim, had been accused of robbing and fatally wounding a Greenville, S. C., cabbie. He was arrested on circumstantial evidence. (Metropolitan press.)

May 1947, Rocky Mount, N. C.: News of what was believed to be another lynching reached Washington, D. C., the week preceding May 28. According to a visitor from Rocky Mount, N. C., the body of Willie Pittman, a Negro taxi driver, was found horribly mutilated on the side of a country road near Rocky Mount. The head was bashed in, the legs and arms cut off, and the body split open. Pittman's taxi was discovered parked in the woods nearby.

June 1947, Atlanta, Ga.: Joe Nathan Roberts, 23, of Philadelphia, Pa., was shot to death by a mob in Sardin, Ga., because he refused to say "Yes, sir," and "No, sir," to white inhabitants there. Roberts was a student at Temple University. The reported lynching was revealed in a letter to Mrs. Evonia Carn, of Philadelphia, from her mother, who lives in Sardin. The parents of Roberts, also residents of Sardin, were spirited out of town. (Released in the Afro-American, June 14, 1947.)

August 1947, Prentiss, Miss.: The body of Versie Johnson, 35, ripped by bullets, was left at the scene of his murder near Prentiss on or about August 1. Johnson was shot dead by police for the alleged rape of a white expectant mother. According to Sheriff G. O. Berry, the prisoner was fired on when he suddenly attacked one of the three patrolmen responsible for his custody. A statement released by the sheriff's clerk indicated that a lynch mob had begun to gather round the jail soon after the prisoner was arrested, and that previous to the slaying members of the mob had given Sheriff Berry an ultimatum to get Johnson's confession by 8 o'clock that evening. Johnson protested his innocence. He reportedly attempted to grab the gun of one of the officers.

Sheriff Berry, State Highway Patrolman J. S. Puckett, and a patrolman named Kapkins were subsequently tried "merely as a formality necessary to clear their names." (AP release, reported in the New York Herald Tribune; also reported in the Negro press.)

December 1947, Lowndesboro, Ala: Elmore Bolling, 30, was found slain the week preceding December 20. His body was riddled by shotgun and pistol shots. More than one were believed, from the body's condition, to have figured in the slaying. Clarke Luckie, white, who alleged that Bolling insulted his wife over the telephone, was released in $2,500 bond. Real motive behind the slaying believed to be the fact that Bolling was too prosperous as a Negro farmer. (Reported by the Negro press, December 20.)

Dunn, N. C.: Charlie (Bud) Smith, 36, was found slain and his companion, Daniel Bassford, who was left for dead, was found to be seriously wounded as the result of mob violence. Governor Cherry, of North Carolina, declared the matter was no mystery, as all parties to the affair were known. None were apprehended. The NAACP asked officials of Lillington and Harnett County to investigate. Local dailies called the incident an "ambush affair."

Carl Cameron, an innocent Negro bystander, was first attacked by the mob, but was released, unharmed. He was arrested and held in jail overnight.

MOB VIOLENCE RESULTING IN PHYSICAL INJURY, 1947

January 1947, Athens, Ga.: Golden Lamar Howard, 19, was beaten by two brothers, Bradley Verner, 36, and Tom Verner, 26, for refusing to divulge the nature of his testimony before a Federal grand jury investigating the Walton County lynchings of July 1946. (NOTE.—In June 1946 Tom Verner was acquitted by a Federal jury and a mistrial was declared for his brother.) (Negro and white press, Jan. 2, 1947.)

February 1947, Collins, Miss.: Lawrence Calvin Jenkins, an honorably discharged Navy veteran of Collins, Miss., was attacked by a group of white men north of town, tied to a tree, and castrated with a razor blade. Untied, he struggled to his home nearby, where his mother found him lying on the porch. He was removed to a hospital in Jackson, Miss.

John Sandiford, sheriff of Covington County, said there was nothing he could do because Jenkins would not name his attackers, one of whom was said to be interested in a Negro girl and resentful of Jenkins' attention to her. The sheriff

found the rope and razor used in the attack after a brief investigation. (Reported to national office by Chicago branch, NAACP. Published in press release under date of February 28.)

April 1947, Decatur, Ga.: Aggie Herndon, 46, and wife Lottie, 40, were severely beaten at their home near Lithonia by four unmasked white men who entered on the pretext of searching for stolen articles. The men took the victims into the woods, administered a brutal flogging to the man and shot the woman. Pistol, flashlight, and blackjack were employed. Although De Kalb County police investigated, no subsequent reports were made to the press. (Negro and white press, April 2.)

July 1947: Charleston, S. C.: Three white youths between the ages of 19 and 20 attacked a group of Negro Boy Scout campers at Camp Pinckney, S. C., the week of July 21, shooting and wounding three. They were apprehended.

August 1947, Jefferson, S. C.: Four men were brutally beaten by a white mob, three for no obvious reason of any kind. Names of the victims were withheld for fear of reprisals. The trouble started when a white man attacked one of the four with a tire tool. His victim was arrested and lodged in jail. The victim's father and uncle went to the jail to learn the charges against the youth. The father was set upon by the mob and beaten. His brother received the same treatment.

(Later, the son of another man was met on the highway by the magistrate, according to reports, and was beaten.)

Several persons admitted seeing the Chesterfield County sheriff and the acting chief of police near the scene of the beatings, but the two made no effort to interfere (Afro-American, August 23, 1947).

LYNCHINGS PREVENTED, 1947

February 1947, Osawatomie, Kans.: George Miller, accused of killing the local chief of police, was rescued by sheriff's deputies and State patrolmen from a lynch mob that had already placed a noose around his neck.

Miller is reported to have slain the police chief when the latter attempted to arrest him on a warrant issued through his wife, charging him with beating her (Negro press, February 8).

May 1947, Pell City, Ala.: Robert Hunt, 28, charged with having attacked a pregnant white woman, was saved, May 1, from a mob of 300 by State highway patrolmen who arrived in time to prevent the mob from taking the prisoner from the sheriff.

Hunt was wounded by shots fired into the jail. He was transferred to Birmingham (Negro and white press, May 2, 1947).

Forrest City, Ark.: Willie Lee Duke, 40, was captured by a sheriff's posse and held in an undisclosed jail because of crowds "gathering and talking trouble" in the community, according to Sheriff R. W. West.

Duke was seized in connection with the knife slaying of Mrs. Ethel Ellis Boyd, 35-year-old cab owner and driver (New York Sun, May 23, 1947).

Rich Square, N. C.: Godwin (Buddy) Bush, 24, a Negro prisoner held in Northampton County jail, was seized by a mob at daybreak on May 23. Bush broke away from the mob as they left the jail and dashed across the street. One shot was fired but missed him. He hid in the woods and dense swamp for 2 days and then crept to a farm house and asked for help.

Bush has been arrested in Rich Square and charged with attempted rape of a young white woman. After giving himself up to the FBI, he was placed in their custody (Metropolitan Press, May 23).

June 1947, Lasker, N. C.: Another assault on a white girl by a Negro man was reported on June 1 at Lasker, N. C. Upward of a hundred men, many of them armed, fanned out over the countryside after the girl reported the alleged attack. Two Negroes found within 2 miles of her home were taken into custody and promptly rushed to an undisclosed jail for safekeeping (New York Herald Tribune, June 1, 1947).

Hurtsboro, Ala.: Jimmy Harris, 18, was rescued by the mayor of Hurtsboro, Ala., from a mob that had placed a rope around his neck and stationed the victim under a tree in front of the home of a woman he was accused of attempting to rape.

Harris was first sent to Phoenix City and then to Kilby Prison at Montgomery for safekeeping. Reports conflict and range from being accused of entering the home of the woman to charges of being found in her kitchen with his arms about her (Metropolitan and Negro press, June 11).

Carrollton, Ga.: A mob of 300 masked white men unsuccessfully attempted to storm the Carrollton County jail June 30 and remove Eddie Brown, Jr., 20, accused of murdering a white farmer. Deputy sheriff, local police, and State patrolmen were effective in resisting the mob. Brown was secretly removed from the jail to Fulton Tower in Atlanta by State police (Metropolitan press, July 2, 1947).

July 1947, Knoxville, Tenn.: John Fleming, a Negro, who was seen walking down the street with a white woman, was placed in jail for safekeeping after being rescued from a mob of 150 men by Police Chief Elmer Kykes.

Fleming, 40, suffered the loss of an eyeball and several cuts and bruises (metropolitan and Negro press, July 8).

Windsor, N. C.: An unnamed middle-aged Negro suspect was arrested the week of July 11 and rushed to an undisclosed jail because of rising tension over an alleged attack upon a 55-year-old woman.

Leesburg, Ga.: Pfc. Herbert L. Archer, Jr., of Newark, N. J., was taken from a train at Albany, Ga., and arrested because he allegedly went to sleep in a lower pullman berth reserved for a white woman.

The woman's complaint brought the conductor who suggested hanging Archer beside the track. The complainant intervened for the soldier. Archer was transferred from Albany as rumors spread that he had attempted to assault a white woman. The local sheriff told his father, after a visit to his son, to get to the next town for safety.

Marietta, Ga.: Charles Mozley, 13, escaped, with police assistance, from a mob of about 300 white men armed with shotguns, rifles, pistols, and clubs. It is alleged Mozley attempted to rape a 72-year-old grandmother who was picking berries with her two grandchildren.

Police indicated that the charge against Mozley would be assault with intent to murder (metropolitan and Negro press, July 23).

August 1947, Columbia, N C.: Seven southern-born whites and an American-born Japanese and two Negroes attending a student project were issued an ultimatum by a mob of 250 whites to leave the county within 24 hours for occupying the same residence.

The group had been working for 2 months on a project of building a cooperative store for Negroes in Columbia. The group leader revealed that the real reason behind the threats of violence was resistance by financial interests in the community (Negro press August 30, 1947).

Gadsden, Ala.: A mob of 75 on August 30 unsuccessfully attempted to find and lynch Art Hendricks, 15, accused of criminal attack upon a 41-year-old white woman.

Hendricks was arrested on September 15.

October 1947, Perry, Ga.: A mob of 10 (Negroes) demanded the custody of James Davis, a Negro, charged with criminal assault on a 9-year-old girl, July 18. The sheriff refused to surrender the prisoner (Negro press, October 25, 1947).

November 1947, Ellaville, Ga : Sheriff Edgar Duane announced that he had taken precaution to avoid mob violence against five Negroes accused of slaying a local farmer by hurrying the accused to separate undisclosed jails (World Telegram, November 5, 1947).

Kingstreet, S. C.: Sheriff Peerless Lambert blocked attempts of an armed mob to remove prisoner Bennie Collins, held on charges of having raped a 15-year-old girl. Collins was removed elsewhere for his safety, reported in Race Relations, December 1947, January 1948.

November 1947, Danbury, N. C.: Officers of Danbury refused, on November 11, to reveal the whereabouts of Harry L. Davis, a Negro who had joined an armed mob combing the hills to seize him.

He was arrested when a neighbor recalled having seen him in the area where an attempt was made to rape a young girl. Davis was taken to Winston-Salem and moved again to an undisclosed jail (metropolitan and Negro press, November 11, 1947).

POLICE BRUTALITY INVOLVING TWO OR MORE OFFICERS

January 1947, Houston, Tex.: Bill Rudd, reporter for the Houston Chronicle, a witness to the following incident, reported:

A man described by the arresting patrolman as "just one of those smart California niggers," was arrested on a charge of "loud talking" and was held for general investigation. Sgt. E. A. Hammett telephoned another officer, "I have a nigger on the way up. He is smart as hell and might give you a little trouble. You might give him a good bouncing."

After booking the prisoner, three officers started down the corridor toward the cells with him. Suddenly one struck him heavily in the back of the neck with his fist. The Negro plunged to the floor All three officers started kicking and stomping him. He was badly beaten.

When Sergent Hammett was informed of the beating, he remarked, "They shouldn't have carried it that far" (Monthly Summary, February 1947).

June 1947, Nashville, Tenn.: Jesse Patton, 18, was beaten by city police in an effort to obtain a confession of robbery and safecracking. The nature of his injuries was submitted to persons investigating this brutality by the physician who treated his wounds (Pittsburgh Courier, June 28).

July 1947, Columbus, Ga.: Sgt. Raphael Showell was viciously assaulted by two Columbus police officers, W. C. Sapp and J. H. Hawkins, because an Army bus, of which Showell was in charge, collided with a civilian car. Showell, declaring himself the officer in charge, was then set upon by the police (Chicago Defender, July 19).

October 1947, Montgomery, Ala.: B. F. Feldey, 65, and his son, Robert, were beaten beyond recognition by C. F. Goolsby and J. R. Ingram on or about October 1. The assault occurred during a trip by the pair to visit Robert's sister, ill in the local hospital. Police stopped the car, ostensibly to search for liquor and guns. The elder Feldey was beaten without restraint. His ribs were broken. Robert's skull was fractured, his arm paralyzed.

Goolsby admitted the incident. Both officers were suspended "for not reporting the incident."

Ingram, a week prior to the incident, beat up James Anderson, a Negro grocery clerk, because Anderson was, according to Ingram, "a smart nigger" (Chicago Defender, Oct. 11, 1947).

November 1947, Slidell, La.: A Negro officer, Lt. Edward De Vaughn, and a sergeant were ordered out of a public pay station at gunpoint by a plain-clothes policeman, and were later overtaken on the road by two plain-clothes men. They were forced from their jeep, arrested, beaten, and jailed without medical aid.

Although charges of "insulting an officer" were lodged against the pair, the soldiers were subsequently released when arresting officers failed to prefer charges. Both victims were hospitalized following their release (Monthly Summary, December 1947–January 1948).

Louisville, Ky.: Patrolman John R. Womack and a fellow officer entered a confectionery, accused George E. Kelly, a Negro, of creating disturbance, beat him unconscious when he attempted to knock a gun out of Womack's hand, and riddled his body with bullets as he lay senseless on the floor.

Local police termed the shooting necessary, although both the proprietor and other witnesses testified that Kelly had been model and discreet in his deportment (Monthly Summary, December 1947–January 1948).

PROPERTY DAMAGED THROUGH MOB VIOLENCE

March 1947: Atlanta, Ga.: The home of Rev. A. C. Epps, a Negro minister, was dynamited and partially destroyed as a result of terrorism by whites opposed to the presence of the newly moved Epps family into the neighborhood.

Mrs. Epps reported that prior to the dynamiting, 10 white men had visited her and warned the family to move. Two other houses in the same vicinity were damaged by bombs the same week (Monthly Summary, April 1947).

July 1947, Atlanta, Ga.: The unoccupied home of Nish Williams, Negro, was bombed for the second time on or about July 12. Considerable damage was done to the structure. Neighbors reported seeing a white man toss a missile into the structure shortly before the blast occurred. No arrests were made although the same parties suspected in half a dozen similar bombings are believed to be guilty (Negro press, July 19, 1947).

August 1947, Birmingham, Ala.: The newly acquired dwelling of Samuel Matthews, a Negro miner, and his wife was dynamited by white terrorists. The blast caused the rear section of the building to collapse and tore off the front. At least six sticks of dynamite were used.

The home was unoccupied by the Matthews who had been reluctant to move in for fear of reprisals. They and others had received cross-bone threat notices (Negro press, Aug. 30, 1947).

October 1947, Miami, Fla.: Mr. and Mrs. Ezekiel Woodard and their family barely escaped with their lives when their dual family dwelling was burned to the ground by terrorists. The area was one recently opened to Negroes. Two

5-gallon containers filled with gasoline were found on the premises by investigators.

The Woodards were among scores of Negro families recently evicted from the Railroad Shop Addition to make room for a new school for white children (Negro press, Oct. 25, 1947).

October 1947, Atlanta, Ga.: An unsuccessful attempt was made to destroy the home of Mr. and Mrs. Oliver L. Cantrell with a home-made bomb containing 5 pounds of dynamite and nitro glycerine. The missile failed to explode. The bomb was taken to police headquarters where it was decapped.

Atlanta, Ga.: The home of Clifford L. Walton, 43, and his family was set afire by a group of white men who resented the entrance of the family into a so-called white residential area. No arrests were made.

Patrolman R. R. Bibb and his partner H. W. Bates, who were in front of the house when the fire started, stated that a white man inquired how long the officers planned to remain and declared that families in the area resented the Negroes' presence. "You may not want to stick around and see what will take place," he concluded. Shortly thereafter, the rear of the house burst into flames. (National and Negro Press, Oct. 24, 1947).

Chicago's race clashes

During the summer months of June, July, and August, Chicago experienced the worst wave of race voilence since its memorable riot a generation ago. The mayor's committee on human rights cites records of 25 cases of vandalism and arson against Negroes including loss of 10 lives by fire. Disturbance was instigated by white residents in efforts to dislodge Negroes from newly acquired homes in so-called white neighborhoods.

On June 5, approximately 500 whites gathered in front of a three-story building on Chicago's Southside in protest demonstration after a Negro family moved into a first floor flat. Before police squads arrived and dispersed the crowd, several members of the mob threw stones at the building, breaking several windows. Three who defied police were arrested. The building is located in an area bound by restrictive-covenant agreements signed by members of the Park Manor Improvement Association. The association filed an injunction suit to remove the Negroes.

Early in July a mob of more than 2,000 whites milled about and threatened violence and property damage to the newly purchased home of Cleo Byrd, Sr. The outburst was an effort to intimidate Byrd, who acquired the property in violation of a restrictive-covenant agreement.

Within the week, Mayor Martin Kennelly met with a representative group of citizens to discuss the issue of violence against Negro home seekers. The group called the mayor's attention to the then 19 cases of attacks against Negroes. Additional police protection was promised.

The following month white terrorists continued a 5-day demonstration over the presence of Negro veterans in the Fernwood veterans' housing project. Disorders first broke out after 8 Negro veterans and their families moved into the project along with 63 white veteran families. A crowd of 2,000 sought to storm the housing area. Four police were injured. Angered over failure to gain entrance to the project, the mob swept into adjoining streets and began stoning passing automobiles driven by Negroes. In three nights more than 100 cars had windshields and windows broken and damaged fenders and bodies. Some 50 Negro men and women were treated at various hospitals for injuries.

INDIVIDUAL VIOLENCE AGAINST NEGROES INDICATIVE OF LYNCH SPIRIT

April 1947, Smithfield, N. C.: Fletcher Melvin, 24, a Negro orderly at Provident Hospital, Baltimore, was shot and instantly killed by train conductor, C. A. James, while en route to his native home in Dunn, N. C. According to Negro fellow-passengers, Melvin was asleep when James gave general orders for all Negroes to occupy the "Jim Crow" coach. James stated that when awakened Melvin objected to the order. He stated that the shooting was in self-defense.

It was not made clear why 8 or 10 railway employees on the Atlantic Coast Line train were not called upon to assist in subduing Melvin, if he had actually been disorderly. The conductor could not explain why he had failed to call upon the police in either Rocky Mount or Wilson, two large towns through which the train passed during the period (Negro press, Apr. 19, 1947).

June 1947, La Grange, Ga.: Henry Gilbert, a 42-year-old farmer of Troup County, was reported slain by Police Chief Buchan of Hamilton, Ga., in Harris

County jail early in June. Police had accused Gilbert of aiding the escape of Gus Davidson, charged with killing a white mill owner.

Investigation by Dan Duke, former State attorney general revealed that murder taking on the aspect of lynching had occurred (Negro press, June 14, 1947).

Atlanta, Ga.: Mrs. Lucy Pyron, 50, a passenger on a crowded streetcar was shot by a white man in a streetcar fracas on June 14. The dispute arose over occupancy of segregated seats. Mrs. Pyron was a bystander.

July 1947, Covington, Tenn.: James Wade, 38, the father of eight was slain by City Marshall Jim Scott. His bullet-riddled body was found near the scene of the slaying. Wade was charged with meeting a white woman. His wife claims he had only purchased some second-hand furniture from her.

Los Angeles, Calif.: Adolphus J. Burley, a veteran, was beaten by a white policeman participating in a road block. While waiting, Burley and his companion, turned on the car radio and laughed at some of the jokes they heard. The officer, nearby, wanted to know what was funny. When Burley explained, he called him a liar, ordered him off the road, assaulted him and put him in a patrol car where he again assaulted him—Burley was beaten unconscious (Negro press, July 19, 1947).

August 1947, New York, N. Y.: Francis Le Maire, a New York Policeman, critically wounded Curtis Jones, a 29-year-old Negro and disabled veteran. Jones objected to Le Maire's language in telling him to move on. Le Maire attacked Jones with a nightstick. When Jones lifted his arms to protect his bleeding head, Le Maire shot him three times (metropolitan and Negro press).

October 1947, Newark, N. J.: The home of Robert Andrews was entered by a band of whites on August 23. Approximately 70 men stormed Andrews' apartment, damaging property and threatening the occupants. The daughter of the leader had reported to her father that three Negro youths had hit her over the eye (Negro press, Oct. 13).

Chicago, Ill.: Cleotho Macon, a veteran, was beaten by Police Lt. Edward Barry in a tavern on October 2. Barry is reported to have been drunk and willfully beat Macon (Negro press, Oct. 18).

November 1947, St. Louis, Mo.: Patrolman Henry Reed shot and killed Henry Black, an elderly Negro, whom he had taken into custody on suspicion of theft. Reports state that the victim was halted in the street by the officer and questioned concerning a rug he was carrying. Black was then put under arrest, as his explanation seemed unsatisfactory, but broke free and ran as the officer was leading him toward a police call box. Patrolman Reed testified that he fired two warning shots, followed by a third, which wounded Black fatally in the head. A coroner's jury returned a verdict of "justifiable homicide." The NAACP is preparing Black's case for the grand jury. (Monthly Summary, December 1947–January 1948).

The Anguilla, Ga., prison-camp massacre

On July 11 the Associated Press reported that five Negro convicts had been shot to death and eight others wounded, two critically, in an escape attempt at a Georgia State highway camp, according to information released by Warden W. G. Worthy. He gave this account:

A group of new prisoners joined the camp yesterday and were sent out to work on the Jesup Highway. The new men refused to work and were brought back to camp about 4 p. m. They would not get out of the trucks when ordered and Worthy called the county police. Chief of Police Russell B. Henderson, of Glynn County, talked to the prisoners and told them to do what the warden ordered and "cut out that foolishnes." The men left the trucks and were lined up in the prison enclosure. When the police chief finished his talk they broke, ran to the barracks, and dove under the building. Others crawled and ran toward the fence enclosure. Officers then opened fire with shotgun and rifles. Five were killed and eight wounded. Fourteen came back and surrendered.

NAACP investigators were rushed to the death camp immediately following the shooting. They worked quietly to assemble the actual facts leading up to the mass murder and uncovered several details of a sensational nature. A summary of their report includes the following:

Six Negro prisoners were killed outright and seven seriously wounded. There was no sit-down strike as originally reported. The men simply refused to go into a rattlesnake-infested swamp without boots. They demanded a meeting with the warden where they could explain their objections, but this demand was refused by the armed guards who were in charge of the work gang. When the men refused to enter the swamp they were told to sit in the road while one of the

guards returned to the camp to report the situation to the warden. Only two guards remained with the men who were perfectly aware of the fact that there were 15 heavily armed guards back at the camp. It was pointed out to the investigators by one of the prisoners that if an escape had been contemplated it would have been more feasible with only two guards over them than later, when they'd been returned to camp in trucks, under the guns of 17 guards.

The trucks carrying the prisoners back to camp were followed by the warden, who requested county police who were met on the road to follow the caravan.

The Negro prisoners were unloaded in front of the barracks where the warden ordered five prisoners to "step out." This the men refused to do when it was obvious to the tightly packed group that the warden was reeling drunk. The warden then ordered Pee Wee Willie Bell to step out "because I'm going to kill you." When bell refused this order the warden sent for some pick handles. A few minutes later the intoxicated warden spoke to County Police Chief Henderson, who got into his car and drove to Brunswick, 16 miles away, returning with a submachine gun. During all of this time the prisoners made no attempts to escape.

When the police chief returned with the machine gun, the warden reeled into the packed prisoners holding his pistol with both hands to get Pee Wee. A few minutes later the shooting began. The survivors insisted that the police took part in the shooting. This has been denied by the police. One investigator was certain that the machine gun had been used against the helpless prisoners.

Published reports reaching the outside world from the death camp gave a considerably different picture from the NAACP findings. One of the first versions appeared in a local paper where it was reported * * * "When Warden H. G. Worthy of State Highway Camp No. 18 strode into a group of unruly Negro convicts at about 4:30 o'clock yesterday afternoon, Willie Bell, a longtimer and reported troublemaker lunged at him. The warden shot Bell with his pistol and immediately half a dozen other armed prison guards opened fire on the convicts with shotguns and pistols.

"A few seconds later the firing had ceased and five of the colored convicts lay dead, eight others were wounded, one dying during the night at the city hospital. Bell received only a minor wound in the leg.

"Witnesses said at the first shot by Warden Worthy, the prisoners broke in all directions, men scrambled under the nearby bunkhouse. Three of the dead Negroes lay where they fell in front of the bunkhouse. Another was killed under the house and had to be dragged out, and the fifth managed to crawl under the house to a 10-foot wire fence on the other side. He was shot climbing the fence and fell dead on the outside.

"The wounded lay where they fell, some under the bunkhouse building, others sprawled in front of it. Fourteen of the group of 27 prisoners in the group were not hit by the bullets and crouched or lay still on the ground as guards rounded them up and herded them into the bunkhouse."

Although the Anguilla camp was ordered closed by Georgia's State Board of Corrections, and an investigation into the responsibility of prison officials was made, none were apprehended.

(Prepared by Julia E. Baxter from materials made available to the Division of Research and Information, NAACP.)

Mr. WHITE. I will not take the time of the committee, because this is an analysis of all these lynchings and near-lynchings, and is somewhat voluminous.

Senator FERGUSON. That covers what period?

Mr. WHITE. It covers the period of the year 1947. I want to show the immediacy of the situation.

Senator FERGUSON. We have it up through 1946, I believe.

Mr. WHITE. Yes; through 1946—it is already in the record.

We believe that there are various reasons why an antilynching bill and a strong and unemasculated one is as necessary now as it was during the days when there were more than 200 lynchings per year.

For one thing, the reason for the reduction is primarily one of fear, fear of the Federal Government. Second, the growing climate of public opinion, North and South as well, has caused lynchings to go

underground, as the testimony which I have just put into the record will indicate.

Third, we need a bill, because lynchers are bullies and cowards. They are bullies like the brutish moron who swaggers around threatening to knock the "block" off of any other man who incurs his displeasure. The bully may seldom have to use his threats, but there is the ever-present threat of committing murder or mayhem, which is virtually as effective as the actual knocking of a man's "block" off until a policeman comes along to restrain the bully.

And then there is the situation which we face if the present spiral of inflation continues to grow and there comes a depression, with competition for jobs. That, we fear, may result in a recurrence of mob violence, and we need Federal legislation to supplement that of the States, and to step in and act if and when the States refuse, fail, or neglect to take action.

Finally, I want to point out that there is hysterical fear in certain quarters in the United States today of communism. I charge bluntly today that the most dangerous destroyer of faith in the democratic process in the United States is not the Communist, but the Eastlands, the Rankins, the Bilbos, and the Talmadges, who cast discredit upon our Supreme Court and who advocate mob violence.

I charge also that those who wittingly or stupidly finance and support the racism of such demagogues are doing more harm to the United States than all the foreign agents who may possibly be at work in the United States.

Finally, I want to say that it is imperative that decent America—and I believe that the overwhelming majority of Americans are decent—must create the machinery now, through antilynching and other legislation, to smash bigotry once and for all.

I want to say also, in conclusion, that I believe that lynching is only part of the picture. I believe it is imperative that the rules of the United States Senate be amended so as to prevent the recurrence of filibusters—which is merely denying to the majority the right to vote up or down any measure which is before it.

I believe it is necessary for the Congress to pass fair-employment-practice legislation, in order to end economic and job discrimination.

I believe it is necessary for the Congress to pass legislation to outlaw the poll tax, which denies a right to vote not only to 4,000,000 Negroes but 6,000,000 whites in the Southern States.

I believe it is imperative that we do the whole job by giving Federal aids to education and to health, particularly in the South, from which I come, where poverty couses not only Negroes but whites as well to suffer from inadequate educational and health facilities.

I believe that if the Congress, the Eightieth Congress, takes such forthright action as that, we can thereby end bigotry in the United States and create a climate of decent opinion which will enable us to live together as Americans and as decent human beings.

In conclusion, Mr. Chairman, I would like, if it meets with the approval of the committee, to submit the analyses of four lynchings, showing the economic, the political, and the social factors involved; and finally, the recent Gallup poll, showing that 69 percent of the people of the country favor Federal legislation; and that of the South, 56 percent of the Southerners polled favor the passage of Federal anti-

lynching legislation, with only 35 opposed and only 9 expressing no opinion.

Senator FERGUSON. They will be inserted at this place in the record.

(The material referred to is as follows:)

[From the Congressional Record—Appendix, July 8, 1947]

ANTILYNCHING BILL

Extension of remarks of Hon. Clifford P. Case, of New Jersey, in the House of Representatives, Tuesday, July 8, 1947

Mr. CASE of New Jersey. Mr. Speaker, under leave granted me to extend my remarks in the Record, I include herewith the following report of the Gallup poll on the antilynching bill which was published in the July 2, 1947, issue of the Washington Post:

"THE GALLUP POLL—ANTILYNCHING LAW FAVORED BY MAJORITY IN SOUTH, NATION

"(By George Gallup, director, American Institute of Public Opinion)

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

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

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

"At present, State governments deal with most crimes committed in their own State. In the case of a lynching, do you think the United States Government should have the right to step in and deal with the crime if the State government doesn't deal with it justly?

"The vote:	*Percent*
"Yes	69
No	20
No opinion	11

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

"Southern voters:	*Percent*
Yes	56
No	35
No opinion	9

"The majority of voters feel that a Federal antilynch statute would serve to discourage lynchings and thus reduce their number. This belief is shown in response to a second question:

"Do you think this would reduce the number of lynchings in the United States or would it make little difference?

	Percent
"Would reduce	60
Little difference	24
No opinion	16

"In the South, however, opinion is more closely divided about the effectiveness of a Federal law in reducing lynching.

"Southern voters:	*Percent*
Would reduce	48
Little difference	37
No opinion	15

"In a companion poll, the institute sounded the reactions of all sections, including the South, to the recent Greenville lynch case, in which a group of 31 defendants accused of lynching a Negro were acquitted.

"It was found that three out of every four voters had heard or read of the Greenville affair. When asked their opinion of the outcome of the case, voters in the South and in the rest of the country expressed disapproval of the acquittal verdict.

	All voters	South only
	Percent	*Percent*
Disapprove of verdict	70	62
Indifferent	3	2
Approve of verdict	12	21
No opinion	15	15

STATEMENT OF FACTS IN THE BROWNSVILLE, TENN., CASE

The Brownsville, Tenn., NAACP was organized June 12, 1939, and was very active, though small, for almost a year. It appears that a part of its program was to urge Negroes to register and vote in the national elections of 1940.

On May 6, 1940, Rev. Buster Walker, president of the branch, together with Messrs. Taylor Newburn and Elisha Davis, members of the executive committee, and Messrs. John Lester and John Gaines, members of the branch, went in a body to the office of County Registrar Mann to register that they might vote in the Presidential election. Mann referred the group to City Judge Pearson, who, in turn, referred them to Jonas Steinberger, chairman of the elections committee. Since Steinberger was out of the city at the time, and having learned that the registration booths would not be open until August, the Negroes let the matter rest for the time being.

Nevertheless, the following day, Deputy Sheriff Bolden told Reverend Walker that "he would drop encouraging Negroes to vote or there would be trouble." Two weeks later Strauss Drumwright, an unemployed white, went to Elisha Davis' filling station and told Davis that he had heard that he was a member of some organization getting Negroes to vote and warned him to "let the thing drop or Negroes will get into serious trouble." Drumwright further told Davis that "the people down at the courthouse say they will run you and Walker out of town if you try to vote."

The activity of the members of the local branch created a reaction on the part of whites of the town resembling that of a mob spirit, which reached its height by the running of Reverend Walker and Elisha Davis out of town, under intimidating circumstances, and by the lynching of Elbert Williams, a member of the local branch.

Reverend Walker was warned on June 14. On June 22 he was forced to leave the town. In the interim, the whites began to inquire concerning the holding of meetings by the branch officials and threatened to break up all meetings in a rough way. News was received by the whites that the branch had had a meeting. Several men were questioned about the nature of the meeting that was supposed to have been held. Threats then became rather general. The Negroes went to the mayor of the town, who advised them that though they had the right to vote, he could not handle "those rednecks." That night a mob formed at the courthouse and went to Reverend Walker's market looking for him. Friends warned Walker, and one Professor Outlaw drove Walker out of the town. Outlaw had to leave town because he extended Walker this courtesy.

On July 9 Mrs. Newburn, secretary of the branch, reported that all officers of the branch had gone, that some were forced to leave and that others had fled in fear of bodily harm.

Elisha Davis was not as fortunate as Walker, Outlaw, Newburn, and other officers of the branch. On the night of June 16 he was forced by a mob to leave home. He was taken to the river and questioned by the mob as to the purpose of the NAACP. He was forced to give names of members under threat of death. He was then told to leave the county.

Members of the mob that forced Davis to leave the county the night he was seized from his home were: Tip Hunter, Brownsville night marshal and nominee for sheriff; Charles Reed, night policeman; Clyde Hopkins, highway commissioner of Haywood County; Albert Mann, farm foreman for Dan Shaw, presi-

dent of the Brownsville Bank; P. G. Fairy, truck driver; Elliot Hays, grocer; Shorty Smity, WPA worker; Will Mann, farmer; Albert Dixon, mule trader; and a truck driver for the Gulf Refining Co., whose name was not known. Albert Mann was charged with being chief spokesman.

Davis' business was seized by whites, who used his equipment and refused to pay Davis for the property being used or for the use of the same. Davis' family later joined him in Michigan.

Shortly after Elisha Davis was run out of town, his brother Thomas and Elbert Williams were taken to the city hall to be questioned concerning meetings. Thomas Davis was not harmed, according to reports, but considered it best to leave town. Elbert Williams, according to city officials, was questioned and released. Officials had inquired into an NAACP meeting in an adjacent town.

According to the widow of Elbert Williams, on the night of June 20 a city police officer, Tip Hunter, went to their home and demanded that Williams accompany him. Hunter had other white men waiting in the car. One was identified as Ed Lee. From the city hall Williams was apparently taken to the river. His widow asserted that she inquired concerning his whereabouts the next day and the officer in charge of the jail, one Hawkins, told her "they" weren't going to hurt him; just wanted to ask a few questions. Hawkins told Mrs. Williams to come back in a day or two if her husband had not returned.

On June 23 Williams' body was found in the Hatchee River by fishermen. It had been badly beaten and bruised, with holes in the chest. Mrs. Williams soon after left the city.

A special grand jury investigated but was unable to return an indictment. As late as August 1940 reports show that Negroes of Brownville were being threatened by local whites.

On June 24, 1940, a conference was had with officials of the Department of Justice in Washington relative to the case of Reverend Walker. Mr. Walter White, executive secretary of the national office, NAACP, presented the findings of a personal investigation made by him, but no positive action beyond that of making investigations resulted from efforts of the Department of Justice.

The Governor of the State of Tennessee was asked to protect the Negroes of Brownville. He replied he had reported all information to the proper State authorities. No positive action was taken by them.

Reports received by the NAACP showed that Negroes did not register in Brownville for the presidential election. "Before this is through, the river will be full of niggers," one white resident remarked.

Despite the efforts of the NAACP and civic-minded individuals, the Department of Justice closed its case files on Brownville in January 1942. No Federal, State, or county investigation resulted in bringing any member of the mob perpetrating this intimidation to justice.

Investigation Into the Lynching of Willie Vinson at Texarkana, Tex., on July 13, 1942

Willie Vinson, a 25-year-old Negro of Texarkana, Tex., was dragged from his bed in a hospital basement by a group of reportedly unarmed and unmasked men, according to the local sheriff, and was hanged to the winch of a nearby cotton gin.

It is an established fact that Vinson was only suspected of attack and was never accused. The woman who made the charge that a Negro had attacked her in the local community "thought Vinson looked like the man."

Although there was never any evidence of Vinson's guilt, William B. Brown, then mayor of Texarkana, in a letter to a local Negro churchman spoke of the lynch victim's guilt as if the fact had been established. "If the criminal had not violated the law in the first place there would have been no lynching." Brown then explained to his correspondent: "There are two laws in Texas * * * the law of the land which prescribes death in the electric chair and also the law of the mob which prescribes the same penalty in a more or less unorthodox manner." He continued: "The criminal, Willie Vinson, knew this, yet with his heart set on hellish mischief, planned his crime and proceeded to attempt to put it into execution, wagering his life and liberty on beating both the law and the mob."

"* * * The citizens of Texas do not tolerate this crime [sic, rape], and like in Vinson's case, that stands for a necktie party or worse when these criminal activities break out."

(Source: Letters and affidavits dated July and August 1942, contained in the files of the NAACP national office.)

Investigation Into the Lynching of Charlie Lang and Ernest Green at Quitman, Miss., October 12, 1942

Charlie Lang and Ernest Green, approximately 14 years of age, were accused of attempted rape, consisting of efforts to entice a young white girl under a bridge. According to Sheriff Lloyd McNeal, both got a "fair and square" hearing before the local peace justices. The boys were taken from jail by a local lynching mob and hanged from the bridge which was reported to have been the scene of the crime.

An NAACP investigator visited Quitman and learned, through inquiry that the young girl, the purported victim of the attempted rape, had long been a playmate of Lang and Green and was accustomed frequently to chase and play with them in local surroundings. On the particular day in question the young girl was seen to have run from the vicinity of the bridge. On being questioned, she suggested their attempt to rape.

A well-known New York reporter visited Quitman in an attempt to sound out the temper of community reaction to the lynching. His questions were directed to Sheriff Lloyd McNeal:

"Question. How do the town people feel about the lynching?

"Answer. We are all for law and order here; but, of course, we got some good folks who get kind of wild. Them niggers is getting uppity, you know.

"Question. Do you think if the FBI turned up some evidence, or maybe you did, you could get a grand jury to indict and a jury to convict?

"Answer. That's a tough question. I really wouldn't know. Feelin' runs high against niggers sometimes.

"Question. Have you any idea what can be done to prevent things like this in the future?

"Answer. Why, no; I don't think I have."

Investigation Into the Lynching of Howard Wash, Near Laurel, Miss., On October 17, 1942

Howard Wash, a Negro 49 years of age, was hanged from a bridge near Laurel, Miss., a community of about 20,000 inhabitants. Charged with the murder of his employer, Wash had been found guilty and because the jury was split in its decision was given a life sentence. On the eve of the day he was to have been sentenced a lynch mob removed him from the jail and carried him to the isolated bridge. His abduction was carried out at a time when local residents were returning from work. Several members of the mob were known and recognized. Four or five arrests were made by State guards but all persons were released.

The same New York reporter investigating the lynching at Quitman, Miss., reported his attempt to secure some information concerning circumstances leading up to the murder of Howard Wash. He interviewed a responsible businessman of the community who told him that the lynching was assuredly an outrage. He remarked, however, that "niggers" have been giving Laurel a good deal of trouble lately. What with young men folk of the town off to war and none left to protect the women, whites are getting extremely worried. "We got to keep niggers in their place," he said.

Investigation Into the Lynching of Robert Hall at Newton, Baker County, Ga., January 30, 1943

Sheriff Claude Screws, official of Baker County, Ga., announced on February 8 that Robert Hall, a Negro, had died at Putney Hospital in Albany, Ga., on January 30. His death resulted from his attempt to take the life of the sheriff making it necessary for Screws to use physical force to protect himself. Screws stated that he had been given a warrant to charge Hall with the theft of a tire. On the night in question he had come with a local police officer, Frank Jones, to make the arrest.

Hall's death was caused by 21 burns and body concussions and by a fracture of the skull according to the white physician who attended him.

Hall's widow testified to the NAACP that Frank Jones, of Newton, had aroused Hall at midnight on January 30. Hall was ordered to dress and accompany

Jones, who maintained he carried with him a warrant for theft of tires from George C. Durm and John C. Durm. Hall was handcuffed, his shotgun was removed from his home, and he was placed in an auto occupied by Screws. All drove off in the direction of the jail.

The following morning Mrs. Hall and her father-in-law visited the jail to inquire about her husband's safety. She was told that he was in a hospital in Albany. On arrival in that community she learned that his body had been taken to an undertaking establishment. She found that her husband had been severely beaten, although at the time he left home he was in excellent physical condition.

Hall's father testified that both Durms stated upon inquiry that they had lost no tires nor had they sworn out any warrants for Hall's arrest.

(Source: Letters and affidavits dated July and August 1942 contained in the files of the NAACP national office.)

Investigation Into the Lynching of Cellos Harrison at Marianna, Fla., June 16, 1943

The facts in the case are these: Cellos Harrison was accused along with several others of the murder of one Johnny Mayo on February 5, 1940. Harrison was released without charge and remained in Marianna 15 months, working directly across the street from the Jackson County Courthouse. Soon after the election of a new sheriff, Harrison was rearrested, a confession was reportedly obtained.

The decision of the court was appealed to the Florida Supreme Court and was reversed. A new trial was ordered. Again Harrison was convicted and sentenced to die, and again his case sent to the supreme court. This time the conviction was upheld. With the assistance of a new attorney this case was reargued. The Florida Supreme Court set aside the conviction on the ground that the confession was not valid, having been obtained by means of intimidation. The court ruled that Harrison was not to be retried. Five days after his release a grand jury was reconvened and indicted Harrison, setting a trial for June 21. On June 16, at a time when his attorney appealed to the Florida Supreme Court for writ of prohibition and habeas corpus, Harrison was taken from the jail and lynched.

(Source: Letters and affidavits dated July and August 1942 contained in the files of the NAACP national office.)

Investigation Into the Lynching of Rev. Isaac Simmons at Liberty, Miss., on March 26, 1944

This report, consisting of an affidavit signed by Eldrich Simmons, sworn to in New Orleans on August 1, 1944, is summarized below:

Eldrich Simmons, 48 years of age, the son of the late Isaac Simmons, of Liberty, Miss., reported that until March 29, 1944, he and his family resided on their family farm at Amite County, Miss. The farm was owned by his father, who had inherited it, debt free, from his own parents. Eldrich Simmons reported that the entire family lived on this farm without trouble until 1941. At this time his father learned of the possibility of oil on the land. He went to Jackson, Miss., and hired a lawyer to straighten out the matter of property rights. The elder Simmons intended that the property should be legally inherited by his children after his death.

During February of 1944, Reverend Simmons was warned not to remove timber from the land by two whites interested in possessing the property. He consulted his lawyer.

Between 11 and 12 noon on March 26, a mob of white men, including those interested in securing Reverend Simmons' property, rode up to the home of his son. He was enticed into the car with the statement that the men were interested in tracking down the exact location of property lines. Eldrich was beaten and cursed. The mob drove to the home of his father and abducted the minister. Father and son were taken to an isolated country spot, where the elder Simmons was slain. Eldrich was released. An inquest was held and a verdict given that Reverend Simmons had met his death at the hands of parties unknown. Eldrich was whisked to Magnolia, Miss., for safekeeping.

INVESTIGATION INTO THE LYNCHING OF JESSE JAMES PAYNE AT MADISON, FLA., ON OCTOBER 10, 1945

According to Associated Press reports, Sheriff Lonnie Davis stated at Madison, Fla., on October 11 that Jesse James Payne, a Negro under indictment for assault with intent to rape a 5-year-old white girl, had been taken from an unguarded Madison County jail and shot to death on October 10.

Sworn testimony and information obtained through the office of the attorney general of the State of Florida convinced the NAACP that motive for the lynching of Jesse Payne had been willfully withheld from the public. The facts as they are contained in our files are these:

Prior to July 1, 1945, Payne together with his wife, his mother and his sister worked on the farm of D. L. Godwin, of Madison County, Fla. Payne was running what is known as a half crop for Mr. Godwin. The planting consisted of 1½ acres of tobacco, 5 acres each of peanuts and watermelons, 10 acres of corn, and one-half acre of okra. On June 23 Jesse Payne approached Godwin and requested an advance in money to meet the personal needs of his wife and baby. Godwin refused. Payne threatened to turn his part of his crops over to the Government as he was urgently in need of funds.

On Sunday, July 1, Payne together with his family and a friend were visiting neighbors dwelling on a nearby farm. This farm was owned by Arch Davis, the father-in-law of Payne's landlord and the father of the local sheriff. Early that evening Godwin and his two sons drove up to Davis' farm and called for Payne. Drawing a gun Godwin forced the Negro into his car. His family did not learn of his whereabouts for many days.

During the period in which Payne was lost to his family his mother and sister were threatened and assaulted in an attempt to make them reveal his whereabouts. Mobs began gathering.

Payne's family finally located him at Raiford, Fla. Payne revealed that Godwin and his sons had taken him to an isolated spot and revealed their intention of lynching him for Payne's threat to ask a Government advance. Godwin is reported by Payne's mother and his wife to have stated to Payne: "I am going to teach you how to put the Government on my land." Payne revealed Godwin's fear of exposure in view of the fact that Godwin had planted more tobacco than was allotted to him under Government agreement. Tobacco had also been planted by Sheriff Davis. Payne was seriously wounded in escaping from the Godwins. He was rescued by a State highway patrolman who took him to Raiford and placed him in jail for safekeeping. Godwin did not release Payne's share of money for crop production.

Approximately 3 months later Payne was brought to Madison County jail. On the second day following he was removed from the county prison and lynched.

The attorney general of Florida investigated the murder. In a report to Gov. Millard E. Caldwell he stated: "It is my opinion that there is sufficient evidence to justify a conclusion that the sheriff did not exercise that degree of precaution and care that he should have in seeing that the Negro was protected from what happened to him."

INVESTIGATION INTO THE LYNCHING OF CLEO WRIGHT AT SIKESTON, MO., JANUARY 23, 1942

This report is based on the findings of special NAACP investigators who spoke with community residents, planters, large landowners, a director of a Sikeston bank, the head of a large milling company, FSA officials, and leading Negroes in Sunset Additions, the Negro quarter.

THE LYNCHING

Cleo Wright was lynched on January 23, 1942, by an organized mob that took him from the city hall. Wright was dying of wounds inflicted the night before by a local policeman. Evidence revealed that Wright, after breaking and entering the home of the wife of a serviceman, dangerously slashed the woman and stabbed the officer who arrested him in his flight. It was held to be true that Wright was well known to the woman, and that he had correspondence on his person from her at the time he was arrested. However, the association between Wright and his victim was never clearly established.

Wright was first treated at a local hospital for wounds, then taken home. At 4 a. m. on the day of his death an ambulance arrived to return him to the hospital. It drove instead to the city hall.

All during Sunday morning groups drifted quietly into town, clustering around the city hall. As tension reached its peak about high noon, the groups merged and as a single mob seized Wright from the building. There was no evidence to show that he had had police protection at any time. The dying man was tied to a car and dragged to the Negro section. He was dumped within a few feet of two Negro churches and the Negro public school, soaked in gasoline, set afire, and burned alive.

COMMUNITY REACTION—WHITE RESIDENTS

On January 29 the National Association for the Advancement of Colored People sent two special investigators to Sikeston to determine the trend of community reaction and uncover facts relative to background conditions.

They found that sentiment among white residents followed traditional patterns:

The prosecuting attorney declared he could not persuade the mob to abandon its purpose. He did not wish the patrolman to shoot into the crowd, for fear of bodily harm to those comprising it. No tear gas was available. He and the highway patrolman assigned to the district, as a precaution against race riot, preceded the mob into the Negro quarter. Both warned all Negroes to remain inside their homes.

The prosecuting attorney did not feel that Federal antilynching legislation would help.

The lynch party was made up of clerks, truck drivers, laborers, unemployed, and "all not asleep or in church, including the upper classes."

White residents were divided over the ethics of lynch action. A majority felt that the lynching was justified. They all revealed that the lynchers would not be ostracized, nor would any implicating testimony be offered. A local planter of sizable wealth and the head of one of the large milling companies there both approved the ideal of a Federal antilynching law. They said that their friends would probably feel different.

Inhabitants felt that they were thoroughly familiar with the nature of the Negro problem and noted that lately Negroes in the community had become increasingly "cocky." They pointed, in example, to a local Negro drug-store clerk who had recently been whisked out of town by his employer. That boy "was just looking for a lynching." He had taken the initiative of opening conversations while serving white customers.

Upper class inhabitants told of tension between white and Negro labor. "If they can't feel superior to the Negro, what would they feel superior about?"

Employers resented increasing union activity among Negroes. Black labor, they held was becoming less subservient as labor shortages increased.

All resented FSA efforts to establish a Negro housing settlement in what they termed the "middle of the white community."

None felt that killing a Negro bore relationship to murder because "the Negro is closer to brute than to an independent human individual with human rights."

COMMUNITY REACTION—NEGRO RESIDENTS

Responsible Negro leadership reported that Negroes in Sunset Additions were not in sympathy with the crime committed by Cleo Wright. Wright was reported to have had a criminal record, and worked as a transient cotton picker. He owned no property.

All held his lynching was another effort to stigmatize and intimidate the Negro in Sikeston.

Many were attending church at the time the lynching occurred. Consequently they were familiar with the mob's activity which took place nearby. They stated:

1. That the participants were unmasked.
2. That no force was used by the chief of police or any other police, or by the highway patrolman.
3. That no arrests were made nor license plates noted although both the prosecuting attorney and the State patrol had ample opportunity.
4. The prosecuting attorney failed to direct the sheriff or other police officers to arrest parties participating in the lynching.

After the lynching, Negroes were advised to stay inside as whites planned to invade their community. They refused to respect this admonition and attended church and civic meetings where they planned methods of protection.

They organized squads and canvassed homes for guns and ammunition. The Governor of Missouri was called by phone. One of their leading ministers was spirited out of town when word was passed down that local officials were familiar with his efforts to solicit State aid and were planning reprisal.

Most of the Negro section is owned by Negroes. A steady exodus from this area disrupted business and commerce. Shops, churches, and schools closed. Whites with Negro servants and employees hastily arranged to have them sent elsewhere. Within a week the community had ceased to function as a social unit. The assistance of the NAACP was requested to hasten a return to normalcy.

LOCAL PRESS REACTION

The Sikeston Herald, speaking editorially January 29, 1942, remarked that the entire white community was guilty of deceiving Negroes in the belief that the two races can mix socially. Although it was also guilty of not enforcing a city council's zoning ordinance (unconstitutional), the Herald did not feel that the community was guilty of mob violence. The fault, it pointed out, rested with the local police in refusing to keep temporarily unbridled passions in check.

The Sikeston Standard, in its letters-to-the-editor columns on January 30, published an anonymous letter calling for official action to—

1. Keep all Negroes off the streets after dark and issue passes through the police department for those who must use the streets at night.
2. Segregate the living quarters of Negroes.
3. Provide whites with adequate police protection.

The "pole-cat editor" of the Standard declared that the lynching would teach Negroes to be good, or leave the community, or expect the same treatment.

The Enterprise Courier of Charleston, Mo., the only paper to comprehend any aspect of the total situation remarked editorially on January 29, 1942:

1. That whites and Negroes alike must clean up backyards.
2. That whites must stop frequenting the Negro community and stop preferring Negro women to their own.
3. That the policy racket owned by whites for the exploitation of Negroes must be discontinued.
4. That Negroes must clean up their own community, discourage liquor-drinking parties and evict "bad actors."

ECONOMIC BACKGROUND

Intimidation of Negroes in Sikeston and its environs was an economic necessity of the moment, our investigators reported. In southeastern Missouri, Negroes are employed only as cotton pickers. "Negroes have always been beasts of burden in southeast Missouri" and since it is important to the economic set-up that they remain in this status, they are not encouraged to develop.

With the aid of labor unions and a gradual growing political consciousness the Negroes have made gains in independence. The feeling that they "should be put back in their places where they belong" was shared by a majority of employers.

Land in five southeastern Missouri counties was river waste until bought by a few far-sighted persons for small price several years ago. Cleared, drained, made productive, it created much wealth for a few people. Seventy-five percent of the land of Pemiscot County, as of 1942, was owned by only 35 persons.

The country is feudal in many respects. After 1924 and the invasion of the boll weevil in the deeper South, cotton became the principal crop. Ten thousand Negroes were imported. While vast fortunes were piled up by a few, the gross income of Negroes and whites remained low. Prior to the war, white sharecropper families averaged yearly an income of $415, while white farm labor families averaged $264. Negroes of all tenure groups averaged only $251 per year per family.

One well-known planter remarked: "We are like the South; still we are different. Our landowners are not as sophisticated, and our labor is not held down by traditions as in the deep South. So the problems of feudalism come to the surface and break out here more than they do in the South. It is a sore spot of change and upheaval. This lynching is only one incident. We are not through with our troubles yet."

FEDERAL ACTION

A Federal grand jury, sitting at St. Louis, Mo., on July 30, handed up a special report on the Sikeston lynching case, describing the occurrence as a "shameful outrage" and censuring the Sikeston police force for having "failed completely to cope with the situation."

The report stated that the grand jury sought to determine whether any Federal statutes had been violated, but "with great reluctance, has come to the conclusion that the facts disclosed do not constitute any Federal offense."

Mr. WHITE. Thank you, sir.

Senator FERGUSON. Are there any questions?

Senator Revercomb?

Senator REVERCOMB. Mr. Chairman, this is a very able presentation of a viewpoint, ably presented. It is regrettable, however, that the witness in presenting it, whatever his feeling might be, would make any personal attack on a Member of the Congress, particularly upon a member of the committee.

I make that comment for the record.

Senator STENNIS. Mr. Chairman, am I permitted to say a word on that?

Senator FERGUSON. Yes, sir.

Senator STENNIS. I was going to say, Mr. Chairman, that I do not know what the practice is here, but I personally object and officially resent the remarks of this witness directed toward Senator Eastland.

Senator EASTLAND. What was the remark?

Senator STENNIS. He called you a demagogue.

Senator EASTLAND. That is absolutely all right.

Senator STENNIS. Senator Eastland is a member of this committee and a Member of the Senate, and the senior Senator from the State of Mississippi.

Senator EASTLAND. Some people might think so. But it is absolutely all right. I do not want to carry on any controversy with a nigger.

Senator STENNIS. Mr. Chairman, may I ask a question here?

He used the word "secede," and referred to recent messages from the South threatening secession.

I do not know what he meant by that, but Governor Wright did not advocate or say anything about seceding from the Union, or anything close to that. Governor Wright is fighting for what he and the people of Mississippi believe is best and necessary for the citizens of Mississippi, both groups, both races. He has not said anything about seceding from the Union.

I appreciate your letting me make that statement.

Senator FERGUSON. Are there any other questions?

That is all, then, Mr. White.

Mr. WHITE. Yes, sir.

(The prepared statement of Mr. White is as follows:)

TESTIMONY OF WALTER WHITE, EXECUTIVE SECRETARY OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE BEFORE THE SENATE SUBCOMMITTEE ON ANTILYNCHING LEGISLATION

The National Association for the Advancement of Colored People was founded in 1909 by a group of courageous men and women outspoken in the hope that mob and lynch terrorism can be destroyed. Many of you here recall the Springfield, Ill., race riot of 1908, the issue which prompted their determined to act. Six persons were needlessly slain and many needlessly wounded. The Springfield inci-

dent was an interim event in the whole grim, tragic history of lynching. It is a sad commentary that for 115 years the crime of mob violence has existed as a constant threat to the orderly process of government in our country.

Since 1921 when NAACP representatives first testified to the need for Federal antilynching statutes, we have consistently urged passage of strong Federal safeguards. We have not been alone in our appeal. Other persons and other organizations, kindred in belief, have made similar representations. The United Nations in writing its Charter recognized the dangers implicit when governments deny to citizens protection of fundamental human rights. On October 28, 1947, the President's Committee on Civil Rights, ably headed by Charles E. Wilson, issued its report. It identified lynching as one of the most serious threats to the civil rights of present-day Americans. It recommended enactment by Congress of Federal statutes guaranteeing for all the basic right to safety and security of person.

Endorsements such as these do not result from isolated thinking. For more than a decade majority public opinion has approved passage of adequate national antilynching statutes. In 1937, 72 percent, in 1940, 59 percent, in 1946, 69 percent, favored adoption.

The NAACP believes the crime of lynching is a national concern. I wish to summarize the substance of our 40 years' experience in investigating the countless lynchings in which our assistance has been sought.

During this time it has noted a gradual statistical decline in deaths from mob violence. This is all to the good. Threat of the passage of Federal legislation and education of the public to the stigma of lynching must be credited for these results. It has noted also the creation of new techniques by which those who rule through terror accomplish their purpose. No longer are lynching parties advertised in the press. Nor do hundreds participate in holiday pastime as heretofore. No pictures are circulated, no souvenirs distributed. We say that lynching "has gone underground." Today's victim is murdered in some isolated spot at the hands of a select, secret few.

Over this same period we find, however, that motivation, excuse, nature, and result of lynch cases remain static. These fundamental characteristics cannot be changed until our cultural patterns of segregation and discrimination are abandoned.

Most, but not all (93.5 percent) of lynch murders reported since 1921 have taken place in Southern or Border States. Most (91.5 percent) of the victims have been Negroes. As Negroes represent only 10 percent of the total population of the United States, death by mob violence assumes definite antiracial proportions.

. Reports to the NAACP indicated that no less than 31 persons suffered severe physical inury as the result of mob violence during 1947. Of this number seven met death by mass slaying in a Georgia prison camp, one at the hands of a lynch mob and six under circumstances indicating lynching the most probable cause. In 17 instances lynchings were prevented only through the diligence of private citizens and civil officers, or through the alertness of the intended victims. Police brutality involving two or more officers was reported in at least six States. Mobs damaged the property and threatened the lives of Negro home owners in Alabama, Georgia, Florida, and Illinois. During the summer months Chicago experienced the worst wave of race violence since its memorable riot. Its mayor's committee on human rights cites records of 25 cases of vandalism and arson against Negroes including the loss of 10 lives by fire. All in all, more than 42 separate cases of mob terrorism were recorded. More than 100 Negroes were victimized.

I am submitting for examination by this committee case studies of nine typical lynchings. These have all occurred within the last 7 years. The studies give credence to our contention that the roots of lynching lie deep in economic and emotional insecurity, setting class against class, destroying labor unity, encouraging migration and diminishing the equitable utilization of human resources. This has been true since 1830 when mob violence first became an instrument of public policy and action. As you recall, those were the days when Abolitionists began striking at the whole vast interest of slave property. When you begin to comprehend that the South has never freed itself from its patterns of economic feudal control, you begin to grasp the basic reason for the persistence of lynching as an institution to this day. It is this institution which destroys free competition and obstructs realization of stabilizing our national commerce.

Apologists of lynching maintain (1) that Negroes always attack white women; (2) that lynch victims are generally guilty; (3) that lynching is necessary because of the slowness of judicial procedure. The truth is exactly the reverse. Although southern courts have shown themselves ineffective in dealing with lynchers, their record for charging and punishing Negroes remains uncontested. For practically all types of crimes Negroes are convicted more frequently than whites and sentenced more severely.

Statistics indicate that less than 20 percent of the victims lynched since 1921 were alleged to have attacked white women. While 102 victims (23 percent) reportedly committed murder, 66 (14.9 percent) were charged with offenses ranging from political activity and union participation to talking disrespectfully to white people. And 51, or 11.5 percent, were either wrong victims or accused of no crime at all.

In the past 26 years 72 percent of the persons lynched were neither formally charged nor arrested. The overwhelming majority of the remainder were never brought to trial. If the safeguard of a fair trial is to remain the cornerstone of our judicial system, a distinction must always exist between those who are guilty and those whom mobs would make guilty.

Public allegiance to "white supremacy" law in Southern States becomes the lyncher's birthright. Mob terrorists know (1) that only a small segment, the community press and clergy, publicly condemn lynch violence; (2) that landowners sanction intimidation of Negro labor; (3) that peace officers are often reluctant to protect Negroes who cannot elect them; (4) that local law-enforcement agencies are ill-equipped to investigate lynch murder; (5) that local jurymen who are their relatives or friends seldom permit the clear intention of the law to alter their prejudiced opinions.

Traditional resentment to "outside interference" impedes remedial action by State or Federal officers. Where community sentiment is opposed to lynching, mobs can be politically influential enough to thwart investigations. Experience has taught that State laws against lynchers are usually ineffective even when prosecution by officials is vigorous and unbiased.

The lynching of Willie Earle on February 16, 1947, is fresh in the minds of all of us. The trial of his self-confessed slayers was without precedent in the history of the United States court cases. The verdict was not. Less than 1 percent of the lynchers indicted and tried in State courts have been convicted for their crimes.

What happened to the perpetrators of the lynchings of 1946? Let's check the record for facts:

Lexington, Miss.: Five men were indicated for the lynch murder on July 24 of Leon McAtee, who had been falsely accused of stealing a saddle. The defendants admitted they had brutally beaten McAtee but were absolved of any connection with his death.

Minden, La.: Albert Harris and John C. Jones were arrested on July 31 by Deputy Sheriff Charles Edwards for allegedly entering a white woman's yard. No charges were filed against the pair. Nine days later the two were released and seized by more than a dozen men who awaited them outside the jail. Jones' body was mangled with a meat cleaver and his hands severed from his wrists. His face was burned by a blow torch so hot that his eyes popped from his head. Harris, fortunately left for dead, lived to escape and identify his abductors.

The chief of police, two deputy sheriffs, and two private citizens were indicted and brought to trial. Not one was convicted.

Monroe, Ga.: Rewards exceeding $50,000 were posted for information leading to the apprehension of the lynch murderers of Roger Malcolm and George Dorsey and their wives near Monroe, Ga., on July 25. Walton County's Sheriff E. S. Gordon sent out a call for State assistance. "I don't have the right facilities. We feel that they are better qualified to handle this case than we are," he said.

Maj. William E. Spence, head of Georgia's Bureau of Investigation, took personal charge. "We can't cope with the local situation," he stated. "The best people in town won't talk about this. When I get back to Atlanta, I'm going to ask the Governor to appeal to every Congressman to help pass Federal legislation against mob violence."

Simultaneously President Harry S. Truman instructed the Department of Justice to "proceed with all of its resources" to ascertain if any Federal statutes could be applied to secure the apprehension and prosecution of the criminals. Not one was found.

So Georgia's lynchers, known to State and Federal authorities alike, walk the streets unabashed and unashamed. One Monroe patriarch explained it thus:

"You got to understand the niggers is the most brutish people they is. They're African savages and you got to keep 'em down."

Opponents of Federal antilynching legislation traditionally maintain that the problem of lynching must be left to the States. Unfortunately it has been. A minimum of 4,982 mob murders since 1882 is the single result. Since 1921 when the possibility of Federal legislation first threatened the sanctity of "States' rights" a record of 407 Negro persons and 40 white persons have been lynched.

Insistence upon State relief overlooks the essential character of the lynching problem. Victims of mob violence do not get the same protection, either through prevention or through punishment, as do victims of other forms of crime. State and county officials neither attempt to prevent nor punish for this crime as they do for other crimes. In other words, the victim of a lynch mob does not get that equal protection of the State's laws that is his constitutional right.

Lynching is always premeditated. Consequently it is one of the few crimes that can be prevented if precautionary measures are taken. Two strong Federal antilynching measures, S. 1352 and H. R. 3488, were introduced in both Houses of Congress last year. Sponsored by Senators Robert Wagner (Democrat, New York) and Wayne B. Morse (Republican, Oregon) and Representative Clifford P. Case (Republican, New Jersey), the bills represent a bipartisan attempt to tackle this national problem. Narrow interpretation by the courts and definitive congressional action, have, over a period of years, emasculated the effectiveness of the fourteenth amendment. The Wagner-Morse-Case bills restore and resecure its equal-protection clause as a Federal guaranty. We believe that these, and these alone, can bring relief effective enough to materially reduce incentives to lynch violence. The President's Committee on Civil Rights, in issuing its report, underscored every major proposal outlined in the projected Wagner-Morse-Case legislation as necessary machinery for control. For many years the NAACP has looked forward hopefully to the introduction in Congress of measures so vigorous as these. In the absence of statutes outlawing unfair-employment practices and poll taxes, until segregation and inequality is banned in the armed forces, in schools and in place of public accommodation, Congress must direct its energies to the passage or antilynching legislation strong enough to cope with the situation that has been created. It is better that we have no statute whatsoever than that we be given one so weak as to discredit further law enforcement.

Few will be naive enough to expect S. 1352 and H. R. 3488 to lead to the apprehension and punishment of all guilty of the crime of lynching. But it is altogether realistic and reasonable to expect that every effort will be made by those in authority to enforce the orderly processes of Government against mob assault.

First. The general record of Federal courts and law enforcement officials is good.

Second. Judges and prosecutors can be brought from other States or sections of the country. They are not responsible to any local electorate and can be expected to conduct trials free from community prejudices and pressures.

Third. Juries can be impaneled from larger geographic areas and not necessarily from the immediate community as happens under State procedure.

Fourth. Opportunity for the selection of Negro jurors will be greatly increased.

The effectiveness of the county-liability provisions included in H. R. 3488 and S. 1352 have been tested and proved by the States themselves. In no county where similar stipulations actually have been enforced under State laws have lynchings recurred.

Consistent agitation for enactment of Federal legislation over the past generation has already served as a powerful deterrent to mob violence. Many mobs bent on lynching have been stopped by threat of Federal action. On the basis of reaction alone, it is logical to assume that the present bills will be substantially impressive.

Lynching today threatens the peaceful existence of the United States in a world where two-thirds of the population is colored. The London Sunday Pictorial, commented last year that Monroe's quadruple lynching "may well make arguable the competence of the United States to offer tuition in democracy to other nations."

Sooner or later we must face the facts. Reports of lynch violence in the foreign press are creating distrust and disrupting hope for international understanding.

On July 28, 1945, when our Senate signed the United Nations Charter it committed the Nation, under article 55, to promote: "Universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."

This is a treaty agreement which, by virtue of constitutional authority, takes precedence over any legislated statutes which negate the intention of the covenant. The Wagner-Morse-Case bills acknowledge this international pact. They establish the right of every United States citizen to freedom from lynching. They define treaty obligations under the UN Charter. They define offenses against the law of nations.

The crime of lynching is a crime against humanity. It robs men of the dignity that is their common birthright. It debases our status as a Nation and exposes us to contempt from other countries. Lynchers inflict punishment that is degrading and brutal. But lynching is more than murder. It is the symbolic act which exploits thousands of American citizens and prevents their competing freely for the decent wages, homes, and other forms of security which are their rightful inheritance under a democratic form of government.

Senator FERGUSON. The next witness is Mr. Fraenkel, of the American Civil Liberties Union.

You may proceed, Mr. Fraenkel.

STATEMENT OF OSMOND K. FRAENKEL, REPRESENTING AMERICAN CIVIL LIBERTIES UNION, NEW YORK, N. Y.

Mr. FRAENKEL. My name is Osmond K. Fraenkel, and I am here on behalf of the American Civil Liberties Union.

The American Civil Liberties Union has long advocated passage by Congress of effective legislation to lessen the likelihood of lynching, to punish persons involved in lynchings, and to give injured persons or their families adequate redress.

In our opinion these objectives are best accomplished by S. 1352, introduced by Senator Wagner for himself and Senator Morse, now pending before this committee. I shall confine myself, in this discussion to the constitutionality of the main features of the bill.

I suppose that since the decision of *Screws* v. *United States* (325 U. S. 91), there can be no serious doubt about the power of Congress to punish State officials who, in the course of the performance of their duties, cause injury to persons in their custody, whether or not the acts done or omitted by the State officers were permitted by State law. I shall not further discuss this aspect of S. 1352. I shall deal primarily with the power of Congress to punish individuals who are not State officers.

Section 5 punishes any member of a lynch mob, and section 4 defines a lynch mob to be an assemblage of two or more persons who commit or attempt to commit an act of violence on any person in a discriminatory manner or so as to prevent his proper legal trial for an offense of which he may be suspected or charged. It will thus be seen that the two sections taken together would reach private individuals who so act as to bring about either a denial of equal protection or a denial of due process.

It has been suggested that Congress has no power to reach private individuals since the fourteenth amendment prohibits only State action and not individual action. The *Civil Rights cases* (109 U. S. 23), are generally cited as authority for this proposition. I believe that despite this and other cases Congress has power to deal with private individuals whenever in its opinion it is necessary to do so in order to safeguard a right guaranteed by the Federal Constitution. It has long been settled that Congress may punish private individuals who interfere with Federal elections—*Ex parte Yarborough* (110 U. S. 651).

Congress also has the power to protect persons who enter public land (*United States* v. *Waddell*, 112 U. S. 76); to protect persons from violence while in the custody of a Federal official (*Logan* v. *United States*, 144 U. S. 263), and protect a person who gives information concerning a Federal offense (*Motes* v. *United States*, 178 U. S. 418).

It was held many years ago that when private individuals, by a lynching, deprived a person charged with crime of his right to a trial, they had violated his constitutional right to due process and could be prosecuted under section 51 of the Federal civil rights law. That case was *Ex parte Higgins*, 134 Federal 400, decided in 1904 by Judge Jones.

Senator REVERCOMB. May I interrupt at that point?

Mr. FRAENKEL. Yes.

Senator REVERCOMB. What was the nature of that case? I am trying to get at this: Is there anything in the civil rights law that could be used today as the basis of a bill upon this subject, or would you say that the present civil rights law referred to here might cover the crime of lynching?

Mr. FRAENKEL. The present civil rights law might cover the crime of lynching. There are, as I have mentioned further in my memorandum, two reasons why in our judgment it is not adequate.

In the first place the punishment under the Federal civil rights law is not, we believe, severe enough to be meted out in a case of lynching; while perhaps severe enough to deal with other infringements of civil rights.

In the second place, under the Supreme Court's interpretation in the Screws case, in order to prevent the civil rights law from attack on the ground of vagueness, it is necessary to find that the act was willfully done. And, as we point out, that had the result of securing an acquittal in the trial in the Screws case.

Senator FERGUSON. Would not all lynching be willful?

Mr. FRAENKEL. Oh, I would suppose so. And the minority in the Screws case could see no reason for the reversal of the conviction in that case. Because the act there done was clearly a willful act. Yet the majority of the court felt otherwise. And when we are dealing with matters so sensitive, where the balance is a five to four decision of the court, we thought that a precise definition of the crime would remove all of that penumbra of doubt.

Therefore, while it is possible, by an interpretation of section 51, to reach the conclusion that lynching is included, a separate statement by the Congress, specifically reaching lynching, would remove all of those arguments which were addressed to section 51 on the ground of its vagueness or generality; whereas, the constitutional basis for the argument would, of course, be the same.

In other words, if section 51 can be interpreted to meet lynching, it must still meet constitutional attack, which is being directed against the bills now before this committee.

Senator FERGUSON. How do you account for the fact that the Attorney General and his aides throughout the country have never used this in a lynching case?

Mr. FRAENKEL. It has been used, but has been used seldom. It has been used in this case I cited.

Senator FERGUSON. Was that a regular lynching case?

Mr. FRAENKEL. Yes.

Senator FERGUSON. Where was it located?

Mr. FRAENKEL. In Alabama. It has been used seldom, but it has been attempted once or twice.

Senator REVERCOMB. Which case is this?

Mr. FRAENKEL. The Riggins case, 134 Federal 400, decided by Judge Jones. That was a straight lynching case.

Senator REVERCOMB. Now, my question right there is this: In that case was the point involved of reaching the lynchers?

Mr. FRAENKEL. Oh, yes; those were the only ones involved.

Senator FERGUSON. Was it not the State officials that were the actual perpetrators of the crime?

Mr. FRAENKEL. No, sir. It was attacked as being unconstitutional; and in habeas corpus proceedings, Judge Jones held that the indictment was good, and an appeal was taken to the United States Supreme Court. It was dismissed in the Supreme Court.

Senator REVERCOMB. The appeal was dismissed?

Mr. FRAENKEL. Yes; it was dismissed on the ground that the point should have been raised by motion to quash the indictment. Therefore habeas corpus was an improper proceeding, and the Supreme Court would have none of it.

Senator FERGUSON. In other words, it should have been certiorari.

Mr. FRAENKEL. No; the Supreme Court said, "We are not going to pass on the merits of the question because the basis of the entire procedure below was incorrect."

In other words, the Court had no jurisdiction to consider this question.

Senator REVERCOMB. The appeal was premature?

Mr. FRAENKEL. No; it wasn't that the appeal was premature. It was the matter of jurisdiction in the court below. The court had no jurisdiction to consider it.

Now, why the appeal was dismissed——

Senator FERGUSON. That is what I am getting at. That the lower proceedings should have been certiorari.

Mr. FRAENKEL. The lower proceedings should have been a motion to dismiss the indictment. You see, what happened here was that a man was indicted for being a lyncher. Instead of pursuing the ordinary practice of moving to dismiss the indictment on the ground that there was no statute that could constitutionally punish that crime, he sued on a writ of habeas corpus. The Supreme Court said that was an improper remedy.

Senator REVERCOMB. The appeal that got to the Supreme Court was a habeas corpus proceeding, and the Supreme Court dismissed the habeas corpus proceeding on the ground that it was an improper remedy?

Mr. FRAENKEL. That is right; and they should go back and take up the subject on a motion to dismiss the indictment.

Senator FERGUSON. What happened to the case?

Mr. FRAENKEL. That doesn't appear. They may have been acquitted. I don't know. The case doesn't again come into the reports.

Senator FERGUSON. Well, do you know of any search ever having been made to see what did happen to that?

Mr. FRAENKEL. I don't know. Mr. Carr, who is the executive secretary of the present Civil Rights Committee, discusses that case in his

book. And he could find no record of it further. He says nothing further appears to have happened.

Senator FERGUSON. Then how could you cite that case for an authority?

Mr. FRAENKEL. Because that is a reasoned opinion by a judge, and it is an opinion which is worthy of study. It is not an opinion, of course, which has been approved by the United States Supreme Court; although I may say it has several times been cited by the United States Supreme Court on other aspects, which were discussed.

Judge Jones, in his opinion, for instance, points out that the right to counsel was an essential of due process, long before that subject had been discussed by the Supreme Court itself. And when the Supreme Court came to discussing that, in the Scottsboro case, and others, it several times cited this decision of Judge Jones; which is at least some indication that the Supreme Court considers this decision as of some value, although the Supreme Court has never had occasion to meet the problem involved head-on.

Senator REVERCOMB. Mr. Chairman, let me ask the witness this question:

Who is judge Jones? Is he a district judge?

Mr. FRAENKEL. He was a Federal judge in Alabama.

Senator REVERCOMB. And he held that an indictment under the Federal civil rights law against persons engaged in a lynching, was good.

Mr. FRAENKEL. That is right.

Senator REVERCOMB. Now, if it was good, and so held by Judge Jones, certainly a trial must have resulted. Did Judge Jones give a written opinion on the soundness of the indictment?

Mr. FRAENKEL. Oh, yes. I was about to quote from that opinion.

Senator REVERCOMB. Now, that is established in law: that one may, under this code, be indicted for the crime of lynching.

Mr. FRAENKEL. Well, there is one case. But, of course, one case doesn't make a history.

Senator REVERCOMB. No, but if it is the only precedent we have, it is the law.

Senator EASTLAND. That was a district court opinion.

Senator REVERCOMB. Whether it is a district court, or a Supreme Court, it is still the law.

Senator EASTLAND. But it is not the law.

Senator REVERCOMB. I think it is if it is the only law you have upon it. It is a court of record, and a court of recorded opinions.

Senator EASTLAND. It is a law court.

Senator REVERCOMB. It is still the opinion of a judge.

Senator FERGUSON. It is the law until reversed.

Mr. FRAENKEL. Now, I have given two quotations from that in my statement, which I don't think I will take the time of the committee to read, unless you would like me to.

Senator REVERCOMB. I would like to have that, because it is bearing directly on the point here.

Mr. FRAENKEL. I say I quote "portions" of his opinion, the whole of which merits careful reading and study:

* * * When a private individual takes a person charged with crime from the custody of the State authorities to prevent the State from affording him due process of law, and puts him to death to punish the crime and to prevent

the enjoyment of such right, it is violent usurpation and exercise, in the particular case, of the very function which the Constitution of the United States itself, under this clause, directs the State to perform in the interest of the citizen. Such lawlessness differs from ordinary kidnaping and murder, in that the dominant intent and actual result is usurpation and exercise by private individuals of the sovereign functions of administering justice and punishing crime, in order to defeat the performance of duties required of the State by the supreme law of the land. The inevitable effect of such lawlessness is not merely to prevent the State from performing its duty, but to deprive the accused of all enjoyment, or opportunity of enjoyment, of rights which this clause of the Constitution intended to work out for him by the actual performance by the State of all the things included in affording due process of law, which enjoyment can be worked out in no other way in his individual case. Such lawlessness defeats the performance of the State's duty, and the opportunity of the citizen to have the benefit of it, quite as effectually and far more frequently than vicious laws, or the partiality or the inefficiency of State officers in the discharge of their constitutional duty. It is a great, notorious, and growing evil, which directly attacks the purpose which the Constitution of the United States had in view when it enjoined the duty upon the State (pp. 409–410).

And, further along:

Is it not clear that private individuals who overpower State officers, when they are endeavoring to protect a prisoner accused of crime, whom they have confined to the end that both he and the State may exercise their respective functions and rights before a judicial tribunal, and wrest the prisoner from their custody, and then murder him to punish him for the crime, do, in the constitutional sense, as well as in every other sense, deprive the prisoner of the enjoyment of due process at the hands of the State, and prevent the State from affording it? (p. 417).

Senator FERGUSON. I will ask the clerk to try to follow that through the Attorney General's office and see what happened to that case.

Senator EASTLAND. We have already, if I understand your argument, an antilynching law. But the punishment is not sufficient, is that it?

Mr. FRAENKEL. In part. It may be suggested that if the foregoing is a correct statement of the law, there is no need for a separate bill making members of a lynch mob criminally responsible.

There are two answers to this suggestion.

In the first place, Senator Wagner's bill greatly increases the punishment and makes it more consistent with the serious character of the particular offense of lynching.

In the second place, a specific definition of the Federal rights involved, avoids the difficulties which the Supreme Court in the Screws case found under both sections 51 and 52, because of their generality of description. This produced a dissent in the Court, three of the judges being of the opinion that on account of the generality of the statute was too vague to be enforced at all. It also resulted in the holding by the Court that in order to obtain a conviction under the existing law it is necessary to establish affirmatively that the act was willfully done, a ruling which resulted in the acquittal of the defendant on the retrial of the Screws case itself. The specific reference to physical violence contained in Senator Wagner's bill removes any possible objection on the score of vagueness.

Senator REVERCOMB. Just at that point: What was the basis of proceeding in the Screws case? Was that a lynching case?

Mr. FRAENKEL. No. The Screws case was a case of a State officer who, having a prisoner in his custody violently assaulted him. I think the prisoner died in consequence. It was argued on behalf of the

officer that that was not action under color of State law, because the officer was venting some private grudge and was not authorized by the State law so to maltreat a prisoner.

Seneator REVERCOMB. It was outside his capacity as an officer?

Mr. FRAENKEL. Yes. The Supreme Court overruled that contention. It was then also argued that the law was so vague—because it merely said, "Any right guaranteed by the Constitution or laws of the United States," without specifically listing particular rights. And there, the majority of the Court came to the conclusion that the law would be bad unless there was a charge of specific willfullness, and they got into a lot of philosophical arguments, from which some of the judges dissented.

Senator REVERCOMB. Which is the older case? The Screws case?

Mr. FRAENKEL. The Screws case is a very recent case (325 U. S. —).

Senator REVERCOMB. The Screws case did not attempt to take into consideration the reasoning of Judge Jones in the other case?

Mr. FRAENKEL. No. In the Screws case it was a State officer, and the contention was that he was acting under color of a State law. There was no necessity of discussing the problem involved in the earlier case. And no such case has, in fact, reached the Supreme Court in recent years.

Now, it will undoubtedly be urged that the contrary to the ruling in the case we have just discussed, was established by cases such as *United States* v. *Harris* (106 U. S. 269) and *Hodges* v. *United States* (203 U. S. 1). In both of those cases the prosecution relied primarily on the thirteenth amendment and to some extent on the equal-protection clause of the fourteenth amendment which were held inapplicable. There was no recognition of the principle involved in the bill under consideration, namely, that the right of a person under charges to a trial was a right to due process guaranteed by the fourteenth amendment and that this right could be infringed when private individuals prevented State authorities from acting. In the lynching cases the basis for Federal intervention is that the mob prevents the suspected person from getting the fair trial which the Constitution guarantees he shall have.

A more nearly analogous situation under the equal-protection clause might be one where private individuals conspired to prevent a Negro on trial from having Negroes sitting on juries. In our opinion, therefore, sufficient basis exists for distinguishing the Harris and Hodges cases even if these should be accepted by the United States Supreme Court as now constituted.

Another basis for upholding the constitutionality of these portions of the bill under consideration is that in effect a lynch mob is, for the time being and often with the connivance of the State, purporting to exercise the power of the law. The Supreme Court has in a number of recent cases recently indicated that merely because the action is in form private action does not remove it from Federal supervision where in fact the area of the action is one normally carried out by the State. This principle was recognized in *Smith* v. *Allwright* (321 U. S. 649) which held that the action of the private Democratic Party of the State of Texas was subject to the restrictions of the fourteenth amendment because operating in the field of suffrage. It was further extended in *Marsh* v. *Alabama* (326 U. S. 501) where the Court held

that a privately owned town could not prevent the use of its streets for the distribution of religious propaganda. As the Court said at page 507:

> Whether a corporation or a municipality owns or possesses the town, the public in either case has an identical interest in the functioning of the community in such manner that the channels of communication remain free.

This may be paraphrased by a statement that whether or not a mob or duly constituted State officer take the custody of a person charged with crime, the public has an identical interest in the functioning of the community in such a manner that the individual be given due process of law.

A third basis upon which constitutional justification for the restrictions upon private individuals may rest is the thought that the purposes of lynching is not merely to deprive the particular individual of his liberty but to intimidate the whole minority group to which that individual happens to belong so that the other members of that group will remain in a condition of inferiority and hesitate to assert rights granted to them by law, including, of course, rights protected by the Federal Constitution. Support for this view will be found in the most recent study of the condition of the Negro in America made by Myrdal, "An American Dilemma."

Moreover, it can be urged that if a community permits lynch mobs to operate with impunity the people of that community have been denied a republican form of government. While the courts have been reluctant in any way to enforce article IV, section 4, of the Constitution, the basis for their reluctance has been that the matter has been political and confided to Congress, not the courts. See, for instance, *Pacific States Telephone and Telegraph Co.* v. *Oregon* (223 U. S. 118).

It is clear, however, that the Constitution gives Congress power to take steps to secure a republican form of government and to protect against domestic violence. See *Luther* v. *Borden* (7 How. 1).

In recognition of that power Congress in 1871 enacted what is now section 203 of title 50 of the United States Code. This permits the President to send militia into any State when because of domestic violence, unlawful combinations, or conspiracies, the execution of the law is obstructed or hindered so as to deny any portion of the community the rights guaranteed by the Constitution. This section provided that when the authorities of the State either are unable to protect the people in their rights or in any way fail in protecting them, such facts shall be deemed a denial by such State of the equal protection of the laws to which they are entitled, under the Constitution of the United States.

The remedies proposed here for the protection of individuals in the case of the failure of constituted authority to protect them are, of course, much less drastic than those established by the section above referred to.

Finally, the statute may be sustained as an aid to the treaty power in fulfillment of our obligations under sections 55 and 56 of the United Nations Charter. See *Missouri* v. *Holland* (252 U. S. 416).

Senator EASTLAND. What are those sections, Mr. Fraenkel?

Mr. FRAENKEL. They impose upon the various member states the duty of preserving democracy and protecting the rights of all minorities.

Senator EASTLAND. What is the other article that leaves the internal policies of a state——

Mr. FRAENKEL. That is true.

Senator EASTLAND. What does it provide?

Mr. FRAENKEL. I don't remember the number of it, but it provides that the jurisdiction of the organs of the United Nations shall not extend to matters which are wholly within the domestic concern of the particular country.

Senator EASTLAND. I see.

Mr. FRAENKEL. We believe, therefore, that legislation of the character proposed by Senators Wagner and Morse will be sustained as constitutional if attacked in the courts. We respectfully suggest that even if Members of the Congress have doubts concerning the constitutionality of this legislation, these doubts should be resolved by the tribunal created for that purpose, namely, the Supreme Court of the United States.

Senator FERGUSON. Are there any questions?

Senator EASTLAND. No questions.

Senator REVERCOMB. I have none.

Senator FERGUSON. Thank you very much.

Senator Stennis, do you want to complete your statement now? We just have a half hour.

Senator STENNIS. I do not think that I could get through in a half hour, Senator.

Senator FERGUSON. Then we will recess until Friday morning at 10 o'clock.

(Whereupon, at 11:30 a. m., an adjournment was taken until Friday, February 6, 1948, at 10 a.m.)

CRIME OF LYNCHING

WEDNESDAY, FEBRUARY 18, 1948

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY,
Washington, D. C.

The subcommittee met at 9:45 a. m., pursuant to call, in room 424, Senate Office Building, Senator Homer Ferguson, chairman of the subcommittee, presiding.

Present: Senator FERGUSON (chairman of the subcommittee).

Present also: Senator Maybank.

Senator FERGUSON. The committee will come to order.

You may proceed, Senator Maybank.

STATEMENT OF HON. BURNET R. MAYBANK, A UNITED STATES SENATOR FROM THE STATE OF SOUTH CAROLINA

Senator MAYBANK. First of all, Mr. Chairman, I want to thank you so much for letting me come here to appear before the committee this morning.

Senator FERGUSON. We are very anxious to have a complete hearing on this matter.

Senator MAYBANK. Mr. Chairman, we are once again concerning ourselves with a diminishing problem; diminishing, in fact, to the point of negligible existence.

Let me put myself on record right here, Mr. Chairman, as opposing the act of lynching just as strenuously as I oppose this so-called anti-lynching bill. I cannot condone any act of violence whether it be committed by one person or an assemblage of two or more persons. Such acts violate every principle of honor and of legal procedure. But neither can I sit back quietly and condone the passing around of a political football under the guise of an antilynching bill.

We of the South oppose this bill not because of what it is, but because of what it pretends to be. I cannot bring myself to support a piece of legislation which I am confident will not serve the purpose for which it is intended, but will only deny to our people one of the basic principles of self-government.

Mr. Chairman, I hardly think the loyalty of South Carolina could ever be questioned. Neither do I believe that the diligent officers of our State should be subjected to the openly accusing finger of such a Federal edict, particularly in view of the record they have made in the suppression of this almost extinct crime.

It has been the policy of the Federal Government, since the birth of our Constitution, to leave to the individual States the administration

of their local affairs. We refer to those time-honored and hard-won privileges of self-government as States' rights.

This proposal here before us strikes at the very roots of those rights. How can we preserve a democratic form of government without preserving the governmental responsibility of the subdivisions? Our progress lies in the direction which moves that responsibility closer and closer to the people. But we are now asked to move it closer to the Federal power in order that States and their officials may be prosecuted for their failure, intended or not, to carry out a Federal edict which was passed on behalf of a minority in control of a few votes.

I say let us commend those States and their officials for the outstanding service they have rendered already. You have only to look at the record. The decline of lynching has been just as steady over a period of years as our logical march toward law and order. It is because our people want it so; not because they were regimented into it. It is my sincere belief that the passage of a bill such as this one would ultimately stir up racial feelings such as we have not witnessed in our time.

I do not mean to say, or even imply, that the taking of a human life in any manner is a matter of little concern. But I do say that the bill we are considering here is a gross misrepresentation, to those who are asking for its passage. The very name is a misnomer when applied to this bill. This is not an antilynching bill. It does not make lynching any more a crime than it always has been. Instead, it merely creates a new crime within the jurisdiction of the Attorney General of the United States; the failure of a sheriff or any other delegated authority of a State or county to prevent a lynching. It boils down to one basic point: In the event of a lynching the Federal Government will send an official to the county in which it occurred with the express purpose of seeing that "all diligent efforts" were made to "protect such person or persons from lynching." In the event the Federal officer finds that proper precautions have not been taken, the county in which the lynching occurred is then fined. I cannot help but call to your attention the fact that a part of this fine would ultimately be paid by the family and friends of the victim. A State law in Souh Carolina provides that a judgment may be brought against the members of the lynching mob for recovery of such fine.

Senator FERGUSON. That is the law in South Carolina at the present time? You can bring a civil action against the people who are parties?

Senator MAYBANK. Against the people who were parties.

Senator FERGUSON. But not against the county or the city or the State; just against the lynchers.

Senator MAYBANK. Yes.

Senator FERGUSON. Of course, that is true in the case of every murder, or any other crime of that kind. Most State laws provide that you can recover for assault and battery, willful injury, just as you would for negligent injury; if, for example, you hit a man with an automobile, and you were negligent. Is that under the same law?

Senator MAYBANK. I would say that is a special law. In times long ago, appropriations were passed to pay for damage incurred in lynching.

Senator FERGUSON. Then there must be some liability of the State.

Senator MAYBANK. No; they had to pass the law.

Senator FERGUSON. Appropriations, I mean.

Senator MAYBANK. They did that by a special act.

Senator FERGUSON. Oh, a special act to cover damages for lynching. Could you refer us to some of those special acts? Would you make a memo of that?

Senator MAYBANK. The one that I had reference to was in the city of Charleston. I referred to a State law. I probably would be incorrect in that, but I will get you whatever acts I can.

What we did was to appropriate the funds through a city ordinance to pay for that.

Senator FERGUSON. Would you let me have whatever you can on that?

Senator MAYBANK. Yes.

Senator FERGUSON. Thank you.

Senator MAYBANK. This proposition, this further extension of Federal jurisdiction, comes before us at a fateful time, fateful not only within these United States but in the course of world history as well. If we allow this centralization of bureaucratic control to continue, the time is not far away when such illustrious State names as South Carolina would come to mean nothing more on a map than a geographic subdivision. We can ill afford to allow such a concentration of power in a Central Government, especially when that power is attained at the expense of the individual State.

At a time when we are taking such an active part in the course of world affairs, and the rehabilitation of war-torn countries of Europe and Asia, can we forget the prewar dispossession of power of component units of the European nations?

Gentlemen, we may well stop right here and reconsider the advisability of stripping the individual States of their constitutional authority. There is no conceivable reason for taking such governmental responsibility away from the subdivisions of our Nation in the face of the record as it exists today.

When I last laid my platform before the people of South Carolina, I did so with the deepest convictions that the State is the only governmental subdivision through which a democracy may function. Can it be that we are going to destroy it? Have we now reached the conclusion that there is no longer such a thing as a Federal Union of sovereign States under the Constitution of the United States? Now is the time for us to stop and consider. Let us take heed now lest we awaken one morning and find our States' rights a memory and our only recourse in a firmly entrenched Federal bureaucracy.

This record to which I refer, and shall do so in greater detail in a moment, is, in itself, a glowing tribute to the rightness of our thinking in our constant fight for the preservation of our State rights. The crime of lynching has been reduced to a point of almost complete extinction in recent years. This has not come about through any Federal intervention. It is so because it is the will of the people. I can see no reason for granting the Federal Government authority at this late date for intervening in a cause in which the very States you wish to preserve have already excelled.

Shall we, here in this Congress and in the face of such achievements, honestly say to the world at large that our State rights are being abolished because we cannot depend upon the integrity of the State and county officials? I tell you the people of this country are becoming more and more concerned about the future of our democratic

form of government. They are beginning to fear for this increasing centralization of power as they watch more and more of their rights of self-government slip through their fingers.

And now we ask those good people to place their local officials and citizens under the "protective" arm of the Attorney General of the United States. Under what guise of necessity can we do such a thing? We could say that their duly elected and appointed officials have failed to uphold the faith placed in them at the time they took office. We could charge them with dereliction of duty.

Senator, I would like to make a statement at this point for the record.

Many times those of us who have always fought so hard for law and order, when we oppose something like this, find ourselves misinterpreted.

When I was mayor of Charleston, in 1936, I spent an entire night in front of the jail with the then head of the police commission, afterward mayor, Mr. Lockwood.

I had another bitter experience in 1940, when I was Governor; I do not remember the date, but it was in the fall. There was a very bad rape case in Georgetown. I called Judge Patterson, who was Assistant Secretary of War, and I told him we had not had a lynching in South Carolina since 1920, and I would appreciate not having to call the National Guard company out, because I wanted to see the laws of my State upheld by the law enforcement agencies of my State.

But when this rape case occurred, when the sheriff told me he did not think he could preserve order, I called all of the Guard out immediately, all except that company.

Senator FERGUSON. You mean you called out the National Guard?

Senator MAYBANK. The State Guard.

I kept them there for 2 weeks, when all the rest had gone off to prepare for the war. I kept them there with the aid and sanction of the Assistant Secretary, Mr. Patterson at the time, who very generously gave me the permission, as the Governor, not to put them in service right away.

Senator FERGUSON. On those two occasions, when you were mayor and Governor, there was no lynching?

Senator MAYBANK. Not a lynching in South Carolina. Unfortunately, the only lynching we had in 28 years, was this last winter. That was the only one in the United States.

Senator FERGUSON. What happened at that time?

Senator MAYBANK. A colored fellow murdered a taxi driver, and he was arrested. And they made a mistake. They placed him in a small jail in Pickens.

When I was Governor, what they did was to bring a thing like that immediately to the capital.

Senator FERGUSON. But they did lynch this fellow?

Senator MAYBANK. They went in there and broke down the door and took the jailer away, and carried the boy out and shot him.

Senator FERGUSON. And killed him?

Senator MAYBANK. Yes.

Senator FERGUSON. What happened then?

Senator MAYBANK. They were all arrested and tried.

Senator FERGUSON. And acquitted?

Senator MAYBANK. Yes.

Senator FERGUSON. How do you account for the acquittal?

Senator MAYBANK. Well, my judgment would be that the reason why they were acquitted, and I do not like to differ with what the law did, the attorney general and the solicitors, and so on, was that they indicted all 28 of them, whereas they should have got the main ones, the ones who did it.

Senator FERGUSON. You think the trouble was that they did not get the right people?

Senator MAYBANK. They got all of them. That is the trouble.

Senator FERGUSON. Well, how do you account for those who were guilty being acquitted?

Senator MAYBANK. They tried them all together.

Senator FERGUSON. And the jury, in acquitting one, decided to acquit them all?

Senator MAYBANK. Well, there were 28 members of the lynching party who were apprehended, jailed, and tried.

To proceed with the statement:

Sudden death is common in this country. Figures on manslaughter, murder, rape, robbery, assault, and other crimes mount daily, reaching very sizable proportions by year's end.

The latest figures available at this time from the Federal Bureau of Investigation which cover a full 12 months are for the year 1946. In 1946 there were 4,701 cases of manslaughter; 13 offenses each day; 1.1 offenses every 2 hours.

There were 8,442 cases of murder; 23 offenses each day, 1.9 offenses every 2 hours.

There were 12,117 cases of rape; 33 offenses each day; 1.4 offenses each hour.

There were 67,512 cases of aggravated assault; 185 offenses each day; 7.7 offenses each hour.

These four crimes totaled 92,772 cases in 1 year; 254 offenses each day; 10.6 offenses each hour.

These are only four of the eight major crimes as recognized by our FBI. We use these four because they are termed "offenses against the person." The figures on the eight major crimes run to a total of 1,685,203 cases for 1 year.

Just for the sake of comparing let us look for a moment at the lynching record for the same year. In 1946 there were 6 lynchings recorded by the Tuskegee Institute, the greatest number of the past 5 years and only equaled in the past 10 years by six in 1938. In 1946 there was 1 major crime committed to every 80 persons in this country. There was 1 lynching to every 24,000,000. Even in 1892 when there were 231 lynchings, the ratio was only 1 to 284,000.

The only figures completed at this time for the last year of 1947 are for the period January through June. The major crime offenses in urban communities show an over-all decrease of 2.3 percent over the same period for 1946 with rape leading with an increase of 3.5 percent. The same period for rural areas shows an over-all increase of 7.5 percent with rape showing a 13.6 percent increase.

These trends cover the first 6 months of 1947, showing 580,682 major offenses; 501,242 of which took place in 2,085 cities with a population of 65,537,365. The trend, over the period of years, has been a constant increase. It continues so.

Now let us have a look at the trends in lynching. The number of lynchings each year have consistently decreased from 231 in 1892 all the way down to 1 in 1945 and again in 1947. Significantly, the number of prevented lynchings has increased in direct proportion to the decrease in lynchings.

The following figures come from the Association of Southern Women for the Prevention of Lynching:

Period	Lynchings	Prevented lynchings	Period	Lynchings	Prevented lynchings
1915–20	367	219	1930–35	84	340
1920–25	189	392	1935–40	30	262
1925–30	88	242	1941	1	21

This particular report ends with 1941.

In Tuskegee Institute's report on the one lynching of 1947, President F. D. Patterson said that lives of 39 persons were saved in "at least 31 instances in which lynchings were prevented." Just one more instance to back our contention that this crime has been reduced to a negligible point because the people want it that way; not through fear of a Federal official.

Judging by the trend established during the first 6 months of last year, it would seem that one major crime was committed for less than every 80 people in these United States. And there was only one lynching; 1 out of 145,000,000 people. That one, I regret to say, was in my State.

The people of South Carolina, individually and collectively, were crucified by the press, locally and nationally, for the verdict of that jury. I shall neither condemn nor uphold that verdict here. The point I want to make here today is this: In the one lynching in 1947, the 28 members of the lynching party were apprehended, jailed, and tried. Judge Robert Martin, Jr., charged the jury on four counts: murder, accessory before the fact, accessory after the fact, and conspiracy to murder. According to the witnesses of the trial, the judge minced no words. "A court of law recognizes no color," he charged. "I instruct you not to allow any so-called racial issues to enter into your deliberations." The requirements of the bill before us had been met and complied with.

That is the only lynching in my State, I think, in 28 years. And it was one that nobody regretted more than the people of South Carolina. I can tell you that.

Well, I will go ahead from that, but if you want me to, I would like to get for you for the record from the War Department, the details of how that guard group was detained.

Senator FERGUSON. You have related that.

Senator MAYBANK. I had the guard detained to protect the trial. And the boy that they had there, strange to say, was tried and sent to jail, and later on they got somebody else, and they found out that he was not the one.

Senator FERGUSON. So that if he had been lynched, they would have lynched an innocent person.

Senator MAYBANK. Of course. But there was no lynching, Senator.

Senator FERGUSON. By your protection of this boy is evidence that the State should act.

Senator MAYBANK. I did not take any chance. I just put the guard right there.

Senator FERGUSON. Yes.

Senator MAYBANK. Is any vice which has claimed 36 lives in the past 10 years deserving of such high priority on our legislative calendar in the face of such figures as more than a million and a half major crimes every year, more than 12,000 homicides annually not to mention between thirty and forty thousand annual automobile fatalities? More people will die in this country this winter from exposure to cold than were killed by lynching in the past 10 years.

How can men who are engrossed in the problem of human sufferings by the millions at home and abroad hamstring the legislative procedure of this Congress with a bill which "hopes" to save an average of three lives a year. They cannot even be sure it will save one life. I say it will not. Lives have been saved and lives are still being saved every day just as the record shows by a rising sense of responsibility on the part of the southern sheriff and his officials.

Senator FERGUSON. We appreciate your appearance here, Senator.

Senator MAYBANK. I want to thank you for the privilege. If you would want that done, I can get the Attorney General to send all of the laws that apply.

Senator FERGUSON. I wish you would give me any ordinance or any State statute that gives damages to the individual.

Senator MAYBANK. Senator Eastland had asked the Attorney General to come up here and appear. I do not know why he did not come. He came some years ago.

As a matter of fact, when this bill was before the Congress before, in 1939, I believe, not this same bill, but the bill before the Judiciary Committee then, I think Senator Connally was chairman at that time, and I was Governor, and quite a lot of testimony was introduced into the record at that time.

Senator FERGUSON. Do you have anything further, Senator?

Senator MAYBANK. That is all. Thank you.

Senator FERGUSON. Mr. Cobb, will you state your full name?

STATEMENT OF JAMES A. COBB, FORMER MUNICIPAL COURT JUDGE, WASHINGTON, D. C.

Mr. COBB. My name is James A. Cobb.

Senator FERGUSON. You have been on the bench here?

Mr. COBB. I served 10 years on the bench in the municipal court. Judge Scott succeeded me.

Senator FERGUSON. And you want to put on this record the fact that you are in favor of a bill to allow the Federal Government to proceed, considering it a crime, when there is lynching?

Mr. COBB. I do; yes, sir.

(Whereupon, at 10:15 a. m., hearing in the above-entitled matter was adjourned, subject to the call of the Chair.)

CRIME OF LYNCHING

FRIDAY, FEBRUARY 20, 1948

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY,
Washington, D. C.

The subcommittee met at 10:45 a. m., pursuant to call, in room 424, Senate Office Building, Senator Homer Ferguson (chairman of the subcommittee) presiding.

Present: Senators Ferguson (chairman of the subcommittee) and Eastland.

Present also: Senator Stennis; Robert Young, committee staff.

Senator FERGUSON. The committee will come to order.

I will put in the record at this time from the Library of Congress a memorandum that was requested by the chairman on the enforcement of judgments against political subdivision of a State under the anti-lynching bills.

(The memorandum is as follows:)

ENFORCEMENT OF JUDGMENTS AGAINST POLITICAL SUBDIVISIONS OF A STATE UNDER THE ANTILYNCHING BILLS

Assuming that the eleventh amendment does not preclude the suit against a political subdivision, which is provided in the antilynching bills, how can judgments arising from such suits be enforced? The duty of a municipal corporation or political subdivision to provide for and pay a judgment against it is equally as obligatory as the payment by it of any other indebtedness (34 Am. Jur., p. 941), and such duty may, in the proper case, be enforced (see *George Allison & Co.* v. *I. C. C.* (1939), 107 F. 2d 180, cert. denied 309 U. S. 656; *Levine* v. *Farley* (1939), 107 F. 2d 186, cert. denied 308 U. S. 622) by an order of the court upon proper motion under the Rules of Civil Procedure for the District Courts of the United States. See *East St. Louis* v. *U. S. ex rel. Zebley* ((1884), 110 U. S. 321); *U. S.* v. *County of Clark* ((1877), 96 U. S. 211); *Badger et al.* v. *U. S. ex rel. Bolles* ((1876), 93 U. S. 599); *Lower et al.* v. *U. S. ex rel. Marcy* ((1875), 91 U. S. 536). A judgment creditor of a public corporation is not entitled generally to levy execution on the property of a corporation, except in a few States, but must look to its revenues for payment. In the excepted States (largely New England), a practice, supposed to be founded on immemorial usage (*Gaskill* v. *Dudley* (1843), 6 Met. (Mass.) 546), permits the bringing of suits against a political subdivision and collecting the judgment from individuals composing it. Under this practice, it is held that where the inhabitants of towns are charged by law with the performance of duties and made liable to a suit therefor, the individual members are liable to the satisfaction of the judgment, the suit in such cases being regarded as an action against the individual persons, sued by a collective name, as a corporation, rather than as a suit against a corporation. A reason given for this rule is that since towns, and other quasi corporations, have no corporate fund and no legal means for obtaining one, each corporator is liable to satisfy any judgment rendered against the corporation. *Chase* v. *Merrimack Bank* (1837), 19 Pick (Mass.) 564; *Riddle* v. *The Proprietors of the Locks and Canals* (1810), 7 Mass. 169. The rule has been applied to school districts (*McLoud* v. *Selby* (1835),

10 Conn. 390; *Gaskill* v. *Dudley, supra.*) and to counties (see discussion in *Hill* v. *Boston* (1877), 122 Mass 344), as well as to towns and parishes. This principle of individual liability does not deprive the inhabitant whose property is seized, of any of his constitutional rights (*Eames* v. *Savage* (1885), 77 Maine 212). A sounder exposition of the law, however, is that the payment of the liabilities of a municipal corporation is a common burden which should be borne equally by all. Accordingly where there is no local provision authorizing resort to private property, the general doctrine is that such property may not be seized on an execution against the property of the corporation (*Meriwether* v. *Garrett* (1880), 102 U. S. 472; *Rees* v. *Watertown* (1873), 19 Wall. 107; *Miller* v. *McWilliams* (1873), 50 Ala. 427). The same general doctrine has been upheld where private property was sought to satisfy a judgment against a county (*Weber* v. *Lee County* (1867), 6 Wall. 210; *Maricopa County* v. *Hodgin* (1935), 46 Ariz. 247; *Emeric* v. *Gilman* (1858), 10 Cal. 404; *Blaine County* v. *Foster* (1934), 169 Okla. 384; *Emery County* v. *Burresen* (1896), 14 Utah 328).

Even an execution against a political subdivision issued by a Federal court has been held leviable upon the property of the inhabitants of the district where such property was subject to levy and sale under the law of the State (*Riggs* v. *Johnson County* (1867) 6 Wall. 166, 191–2) but not in cases where the rule did not prevail in the courts of the State (*Merriwether* v. *Garrett, supra; Rees* v. *Watertown, supra*; *Riggs* v. *Johnson County, supra*).

Where demand for payment of a judgment is made and refused, the court may issue the proper order subjecting any surplus funds to the judgment (*Mayor of Anniston* v. *Hurt* (1903) 140 Ala. 394; *Emeric* v. *Gilman, supra; Olney* v. *Harvey* (1869) 50 Ill. 453; *Baltimore* v. *Keeley Institute* (1895) 81 Md. 106; *Smith* v. *Ormsby* (1898) 20 Wash. 396; *Emery County* v. *Burreson* (1896) 14 Utah 328). Such order is not necessarily violative of a constitutional provision that no money raised by taxation, loan, or assessment for one purpose shall be directed to another (*Howard* v. *Huron* (1894) 6 S. D. 180). But if the taxing power of the subdivision is limited and insufficient to raise more than the funds required for the payment of current expenses, the judgment creditor will have to wait until a surplus shall accrue, just as any other creditor has to wait upon an impecunious debtor (*U. S. ex. rel. Siegel* v. *Thoman* (1895) 156 U. S. 353; *East St. Louis* v. *U. S. ex. rel. Zebley* (1884) 110 U. S. 321; *Sherman* v. *Langham* (1897) 92 Tex. 13). Although want of funds may be a defense, if the officers possess the requisite power to levy a tax to satisfy the judgment, they may be ordered to do so (*Santa Fe County* v. *New Mexico* (1909) 215 U. S. 296; *Beadles* v. *Smyser* (1908) 209 U. S. 393; *Macon County* v. *Huidekoper* (1890) 134 U. S. 332; and 34 Am. Jur. 987).

As indicated earlier, an execution, as a general proposition, may not be levied against the property of a county or municipal organization unless there is a statute expressly granting such right. (See 21 Am. Jur. 229 citing *Maricopa County* v. *Hodgin* (1935) 46 Ariz. 247; *Mayrhofer* v. *Board of Education* (1891) 89 Cal. 110; *Gilman* v. *Contra Costa County* (1857) 8 Cal. 52 and other cases.) Even where such right is granted, the general rule is that an execution may not be levied on property such as public buildings, fire equipment, school houses, etc., which is held in trust for public use (Ibid, p. 230 citing *Re New York* (1921) 256 U. S. 503; *New Orleans* v. *Louisiana Construction Co.* (1891) 140 U. S. 654; and other cases). Nor may the funds acquired in a governmental capacity for particular governmental purposes be reached inasmuch as they constitute trust funds and a levy of execution on them would interfere with the proper and orderly functioning of governmental machinery (Ibid, pp. 230–231 citing *Klein* v. *New Orleans* (1878) 99 U. S. 149; *Vanderpoel* v. *Mt. Ephraim* (1933) 111 N. J. L. 423 and other authorities).

Senator FERGUSON. Mr. Young, do you have something to read into the record?

Mr. YOUNG. Yes, sir. Let the record show this will be an explanation of the ultimate disposition of the defendants in the case of *Ex Parte Riggins* (134 Fed. 404).

Senator FERGUSON. That was cited in the brief of Osmond K. Fraenkel, and I asked you to get the information, if you could, as to what happened in that case.

Mr. YOUNG. Yes, sir.

The facts show that Riggins and Powell were indicted for conspiracy under sections 5508 and 5509 Revised Statutes. They took one, Maples, from the sheriff of Madison County, Ala., and lynched him.

Riggins applied for discharge on habeas corpus on the ground that the indictment under which he was held did not charge any offense against the laws of the United States.

That is the case of *Ex parte Riggins* (134 Fed. 404).

The writ of habeas corpus was discharged and the prisoner was remanded to the marshal. Generally, the decision went on the grounds that the statutes do not apply to the acts of Riggins.

Senator FERGUSON. So then there was a trial later?

Mr. OUNG. I am coming to that now. That is the first case. The petition for habeas corpus.

The next case is in 199 United States Code 547.

In this case, Riggins appealed the previous case to the Supreme Court of the United States. Habeas corpus was denied by the Supreme Court, and the petition of appeal was dismissed without prejudice.

The decision went on general technical grounds and not to the issues or merits of the previous case.

It was held that habeas corpus cannot be used to correct errors. Here there were the remedies of writ of error and appeal.

That throws Riggins back to his ultimate trial.

Senator FERGUSON. Yes.

Mr. YOUNG. The next case was *The United States* v. *Powell* (151 Fed. 648).

Powell was one of the original codefendants, and he entered a demurrer, after taking a separation, and this demurrer was sustained by the Federal Court.

Again, the issues were not decided. It happened in the same term of the Riggins' case, before the Supreme Court, that the court decided the Hodges case, which is 27 Supreme Court, pages 6 to 51, which involved similar questions.

Generally, the Supreme Court held the conspiracy statutes did not apply unto the acts of the lynchers.

In the Powell case, the Court felt bound by the Hodges case, and accordingly sustained the demurrer. Therefore, Powell went free, and while I have not checked this, I assume that Riggins did also.

Senator FERGUSON. That would indicate then that the Supreme Court has said, at least the Federal courts have now said, that in a lynching by two people they could not be prosecuted under the Federal statute for conspiracy to take away a person's civil rights?

Mr. YOUNG. That was the result of these two decisions. I have not studied the decisions themselves to find out what the thinking of the court was, but the result was the statutes did not apply to this set of facts.

Senator FERGUSON. That is what I mean: Where two people had taken out a person from a jail and lynched him and killed him, that was not conspiracy.

Mr. YOUNG. Under these statutes?

Senator FERGUSON. Under the statute. Notwithstanding the usual definition of conspiracy is a combination of two or more persons to do an unlawful act or to do a lawful act unlawfully.

Mr. YOUNG. That is correct, sir.
Senator FERGUSON. Senator Stennis, do you want to proceed now?
Senator STENNIS. Yes.
Senator FERGUSON. You may proceed.

STATEMENT OF HON. JOHN C. STENNIS, A UNITED STATES SENATOR FROM THE STATE OF MISSISSIPPI

Senator STENNIS. I will take up my statement with the paragraph I left off on before.
Senator EASTLAND. I think you should start from the beginning.
Senator FERGUSON. I think it all ought to go in at one place, Senator.
Senator STENNIS. You think so?
Senator FERGUSON. We ought to have the whole thing in one place in the record. Suppose you start over. If you could, we would appreciate it.
Senator STENNIS. Yes, sir.
First, gentlemen, I want to thank you for an opportunity to appear here today and my remarks will be addressed to S. 1352, as that is the broader of the bills pending before you.
I want to emphasize that I am here not as a perfunctory appearance, but I am here because I believe with all my mind and with every patriotic impulse that I have, that this bill is entirely unconstitutional.
Senator EASTLAND. Right there, Senator, what position did you hold before you were elected to the United States Senate?
Senator STENNIS. I have covered that very briefly.
Senator EASTLAND. You were circuit judge. How long were you circuit judge?
Senator STENNIS. Eleven years.
Regardless of the good faith and high motives of its authors, it is far beyond the powers of the Congress to enact such legislation.
In my humble opinion, these bills strike at the very foundation of one of the vital, fundamental principles of our great Government; that is, the rights and responsibilities of the respective States of the Union.
I emphasize responsibilities as well as rights.
I think it is high time that we go back and consider some of the fundamentals upon which our form of government was founded by the various groups following the Revolutionary War.
We had the Puritans, the Dutch, the Quakers, Catholics, the English, and many other groups, all with their different views and with their different local needs. They all felt the need of, and they agreed to a Union of the States, but they very definitely did not surrender their internal affairs; they created a government of limited powers only, and kept clear the line of separation between the States and the National Government, and to be sure, they provided in the tenth amendment:

> The powers herein expressly granted are reserved to the people and to the States.

The people and the States have never repealed that amendment, and I do not think that they would do so now if the matter were directly submitted to them. But I believe these bills do propose to repeal that amendment piecemeal.

I do not believe that the States would have ever agreed to a Constitution at all if it had not been for a clear understanding regarding the separation of these powers; further, I do not believe that our Government would have grown to the great power that it is if it had not been divided into many separate State units; further, I do not believe that it can, or will, long endure as a great power when that division of State and Federal responsibility and power is removed.

I therefore strongly feel that I speak for both the Federal and State Governments when I oppose this measure.

I want to say right there, gentlemen, that I am from an area where we have two principal races, about equally divided in number. I feel that I appear here for both of those races and speak for what is their best interest in opposing these bills, and I do that based upon 20 years of public service there among those people.

I have been a lawyer by profession for 20 years. I have spent the last 16 years of that time in the courtroom, 5 years as district prosecuting attorney and 11 years as a trial judge of a civil and criminal court of unlimited jurisdiction, the circuit court.

This has given me the most direct and intimate and continuous contacts with court officials, county officers, jurors, and rank-and-file citizens, and with those charged with crime and those convicted of crime. These have included the red man, the black man, and the white man.

My conclusion is that the real strength of our Government is found, not in Washington but in the 3,000 and more county courthouses scattered throughout the length and breadth of our great land, where the people have the responsibility of administering their own affairs according to their own laws and according to their own needs and conditions, and not by some pattern supplied by far-away Government.

Senator FERGUSON. Do you not agree, though, that there are certain crimes that are Federal crimes?

Senator STENNIS. I think so; yes, sir.

Senator FERGUSON. I think we would agree in the statement that a great force does lie in the county courthouse, but also it has been found necessary that we have to have Federal district courts, which are the trial courts for Federal crimes.

Senator STENNIS. Yes, sir.

Senator FERGUSON. We have to recognize certain Federal crimes. Is that not true?

Senator STENNIS. That is certainly true.

Senator FERGUSON. And when the Constitution provides for something and a violation of it would be of such magnitude to be a crime, do you not think that ought to be a Federal crime? For instance, the Constitution guarantees to the people certain inalienable rights; and in our Government, it is one of voting.

Senator EASTLAND. When did the Constitution guarantee that inalienable right? What section?

Senator FERGUSON. It does.

Senator EASTLAND. What section? What amendment guarantees such a thing? It is unheard of. Voting is a privilege conferred by the State if the Constitution means anything.

Senator FERGUSON. I will not discuss that with you now.

Senator EASTLAND. You cannot point to a section of the Constitution to uphold what you say.

Senator FERGUSON. I can; because it guarantees a republican form of government in every State.

Senator EASTLAND. A republican form. That means the form of government the States had when the Constitution was adopted, and they certainly put restrictions on suffrage.

Senator FERGUSON. It means the right to vote.

Senator Stennis, coming to the next proposition, which is the one here: It guarantees to people equal protection under law.

Senator STENNIS. That is right.

Senator FERGUSON. It guarantees to people equal justice under law; and if a man is arrested for a crime, or even suspected of a crime, and the State is not going to guarantee to that man a trial, due process of law, then a Federal crime has been committed if the National Government at Washington, through its legislative body, declares that to be a crime, and that is why we are sitting in these hearings.

Senator EASTLAND. That would apply to a white man as well as a black man.

Senator FERGUSON. Yes.

Senator EASTLAND. What about the crime of rape? Is that a Federal crime?

Senator FERGUSON. No.

Senator EASTLAND. You protect the lynching and not the rape?

Senator FERGUSON. You said a black or white man. It applies to every man.

Senator EASTLAND. If the Congress has got the right to make lynching a Federal crime, why has it not got the right to make rape a Federal crime?

Senator FERGUSON. Because the lynching is taking away the due process of law.

Senator EASTLAND. It is, when a grand jury investigates it, and when a man is indicted and tried in the State courts?

Senator STENNIS. I think, Mr. Chairman, on your original question there, it is a question, first, of power and not a question of method.

Senator FERGUSON. That is right.

Senator STENNIS. And it does not seem to me like the Congress has the power. But if we do have——

Senator FERGUSON. Then you come next to the question of method.

Senator STENNIS. Yes. My experience has led me to believe that the State method is the best.

Senator FERGUSON. That is a different proposition.

Senator STENNIS. That is right.

Senator FERGUSON. You and I can debate the method, but the question we have to also debate is the power.

Senator STENNIS. That is right.

Senator FERGUSON. It is my contention that Congress has the power. Of course, my contention has been, listening to this evidence, that the method should be worked out in a bill for the Federal Government. That is where you and I differ.

Senator STENNIS. That is right.

Senator FERGUSON. You say that the State can do this job.

Senator STENNIS. And I say the State——

Senator FERGUSON. Should do it.

Senator STENNIS. Yes; should do it; and they are making a bona fide effort to do it.

I am going to cover that point later.

Coming to some of the legal aspects of the various provisions of the bill, one thing that really shocked me was the provision to impose a criminal fine on the political subdivision of a sovereign State of the United States. That just shocks me. It is the creature turning on its creators, with designs of punishment in what seems to me to be a gross invasion of the sacred sovereignty of a State. This is an extreme step to take, as any lawyer will agree, and I respectfully ask the authors of this bill: By what grant of authority do you expect the Congress to proceed?

Gentlemen, I have not been able to find any authority, and I say here that I do not believe there can be presented one line of sound legal authority for section 8 of this bill, which proposes to impose a fine against a governmental subdivision of a sovereign State.

Senator FERGUSON. Could I ask you—your experience is as a lawyer in the Southern States, in Mississippi?

Senator STENNIS. Yes.

Senator FERGUSON. Is there any State law to reimburse, for instance, one who has been injured by lynching, or his heirs, if he has been killed by lynching? Is there any law to compensate the person?

Senator STENNIS. Under the general liability—civil liability laws. We have no special statute.

Senator FERGUSON. You have no special statute?

Senator STENNIS. No, sir.

Senator FERGUSON. In other words, you have a law now that provides, of course, if you hit a person with an automobile and you are negligent in doing it, and he is free from contributory negligence, there could be a judgment given against you.

Senator STENNIS. Yes.

Sentaor FERGUSON. And also, if you commit an assault and battery upon a person, you are liable in damages.

That is true?

Senator STENNIS. Yes.

Senator FERGUSON. But there is no special law.

I think Senator Maybank said at times there were statutes passed in his State which directly compensated people for the effect of lynching.

Senator STENNIS. Yes.

Senator FERGUSON. I wondered whether your State had any such thing.

Senator STENNIS. Nothing in the nature of penalty. We have, of course, our general common-law liability and general liability under our statutes.

Senator FERGUSON. But this law that we are now debating here goes a little further and says that the municipality shall be liable.

Senator STENNIS. That is right.

Senator FERGUSON. I will ask you this: Suppose a resident of Mississippi has a home, and that the police would fail or neglect to prevent a mob from burning his house. A mob just went up and burned it. That will take it out of the so-called lynching. He is not a colored

man. He is a white man. That will get it away from that question.

Would the law in any way provide you could sue the municipality for failing to enforce the law if that man's home was burned down?

Senator STENNIS. Frankly, I do not think so. They might be able to get up some theory of provision upon which the city would be liable but my impression is that they would not.

Perhaps they could go back to the original selection of those officers, if they selected a knave or something like that. It is like a master selecting the wrong type of servant. But I do not think we have any law directly covering that.

Senator EASTLAND. Does Michigan?

Senator FERGUSON. I never heard of one that would allow recovery, but I can imagine a case where you could get damages against the municipalities.

I do not know of any law, but apparently Senator Maybank was talking about a special statute for the purpose of compensating.

Senator STENNIS. We have no such statute, I am sure.

Senator FERGUSON. But that is what is in this statute: That the municipality becomes liable, or the county becomes liable, or the State becomes liable, for its failure to enforce the law.

Senator STENNIS. What shocked me was not the proposition of wanting to do justice, but the idea of the Federal Government imposing a penalty on a subdivision of a sovereign State.

If the State saw fit to do that, that is altogether a different question, I think. The State is the parent of the subdivision.

Senator FERGUSON. There you come again to the question of the right of the Federal Government to do it.

Senator STENNIS. Yes, sir.

Senator FERGUSON. I do not think there is any doubt you and I would agree the State could do it. If the State legislature wanted to pass a law and say if the municipality did not do the job, they could become liable, they could do it.

Senator STENNIS. That is right.

Senator FERGUSON. Of course, the old "hue and cry" law was a very similar idea, was it not, in ancient times in England: That if the crime was committed and the municipality failed to put forth a hue and cry that the king levied a penality on the municipality of so much damages for failing to put forth the hue and cry? Was that not true?

Senator STENNIS. I think that is right. I refer to that in here.

Senator FERGUSON. Has that ever been carried to our States under our common law?

Senator STENNIS. Not that I know of, Senator.

Senator FERGUSON. That is, if they fail to do their duty. I do not say that is not a law in Michigan, but I just have not had it ever called to my attention. But if they failed to do their duty—that is, the municipality does not have a police force that will go out and reasonably enforce the law—is the municipality liable to the citizens for the damages caused by virtue of a negligent police department?

Senator STENNIS. Of course, we have most of our officers under bond, and that is for the benefit of anyone injured.

Senator EASTLAND. Would not the same thing be true of the right to work? The right to work is a God-given right. Here is a strike. There is violence on a picket line. The police will not enforce the law.

Senator FERGUSON. It would be the same thing. I do not see any distinction. That is why I eliminated the question of the colored man and the white man, so there could be no argument there was prejudice and take away that feeling.

Of course, there have been a number of white people lynched.

Senator STENNIS. Oh, yes.

Senator EASTLAND. As many as Negroes.

Senator FERGUSON. I never had the figures, but someone put them in the record the other day.

Senator EASTLAND. As long as you have rape, you are going to have lynchings.

Senator FERGUSON. Of course, there have been lynchings where there has not been rape or any evidence of it.

Senator STENNIS. While we are on the point, I want to assure this committee, I know of my own personal knowledge there is an active, conscientious, consistent effort on the part of the people in the area of the South I come from to prevent lynchings, or prevent the infliction of corporal punishment outside the law, and that those things are taken very seriously.

Men take an active stand on it. When there is any thought that anything like that may come up, men assure the judge over the telephone, or come by the courthouse, and say, "Now, you have our moral support," and things like that.

I do not mean to say those things occur every day, but they occur when they think something may happen.

Senator EASTLAND. I have seen the best people in the community take their guns and go and help the police.

Senator FERGUSON. I think the record shows that Senator Maybank said, when he was mayor, he went down to the city square and personally helped to prevent a lynching; and when he was Governor, he personally went out.

Senator EASTLAND. Yes.

Senator FERGUSON. Which demonstrates to me, at least, if the municipality wants to prevent the thing, they can go a long way to prevent it.

Senator EASTLAND. I have never known one where there was connivance with the peace officers.

Senator STENNIS. I have not, either.

Senator FERGUSON. Has it not been known in some of these cases that the police officers themselves helped to take the person out?

Senator EASTLAND. I do not believe that.

Senator FERGUSON. I do not have any facts.

Senator EASTLAND. I do not believe that.

Senator FERGUSON. It is the impression I have from reading.

Senator EASTLAND. You find, where it happens, that generally the mob gets the accused rather than the officers. They capture him first.

Senator FERGUSON. Are there any organizations in the South—take the Ku Klux Klan, for instance—that one of its purposes is that of lynching?

Senator EASTLAND. I would not say so. Of course not. No organization has for its purpose lynching; and as far as the Klan is concerned, I have never heard of it. We have got none in Mississippi.

I expect you have got more of them in Michigan than we have got in all the South.

Senator FERGUSON. We had some experience in Michigan with the Black Legion, which was an offspring there of the Klan, as I understand it, and that had as one of its purposes really the killing of people.

Senator EASTLAND. We never had anything like that.

Senator STENNIS. The charge has been, Senator, that people from our area want to oppose these bills and keep it where there will not be any Federal law to interfere with anything they might want to be done.

Senator FERGUSON. If this law is passed, it will apply to Michigan as well as Mississippi.

I am not purporting here that Michigan is lily white, you know.

We would have people that sooner or later may come under this particular law.

But my feeling is we have got to prevent these things; we have got to have equal justice under the law; and we have got to have due process; and whether we do it by State laws or Federal laws, we have got to do the job.

Senator EASTLAND. You say "prevent." Is it something that occurs often or a rare thing?

Senator FERGUSON. I do not say you can prevent it by criminal law, but you have got to punish people who carry it out.

Senator EASTLAND. Is there much in this country? The records show one case last year and no facts to show it could be prevented.

Senator FERGUSON. Do you not feel that one of the reasons for punishment is it deters people from committing similar crimes?

Senator EASTLAND. What about the State of Illinois? For instance, there was the most horrible thing I ever read—machine-gun battles on the street between two gangsters. As a result, forty-odd men were killed and not a one was convicted. They got out with tanks and shot at each other. We did not hear any cry going up here that law enforcement in Illinois had broken down and we had to have a Federal act.

Senator FERGUSON. That does not mean that Illinois could not benefit by a Federal law to prevent that.

Senator EASTLAND. When you have wholesale unlawfulness and robbery in Michigan, you do not hear a hue and cry that their law has broken down and you have got to have a Federal act and send the Federal Government in.

Senator STENNIS. Just as actual proof on the attitude of the people, by and large, being opposed to lynching now. That is what we are getting down to, lynching. And what is the attitude of the people.

A little over a year ago I was called to a county where I was a stranger to hold a week of court, where the docket had already been set. There was not any chance to get down there and learn anything about the nature of things, and when I got there, there was already a case set for trial where there was a colored man charged with what was an atrocious rape on a white lady there in this little city while she was tending her sick baby late at night.

I did not know what the situation was. Reports came to me that they might attempt to take the defendant.

Trial was set for the next day.

I told the sheriff to get 20 reliable citizens, half young men and half more mature men, and they came in there the next morning.

I conferred with them back in the room and told them I was a stranger and was going to rely on what they said; that they had a case where it was the duty of the county to protect the prisoner; and whether or not they were willing to stay there as civil deputies if needed.

I compared it with the young GI's, the idea they had gone out to defend their flag on the battlefield, and if necessary we wanted to preserve the principles for which that flag stood there at home, and if necessary they might have to stand in line when it would not be peaceful.

I did not know about that. It was just reported.

Every one said they were willing.

As it turned out, there was nothing to this threat, but I was greatly impressed with their attitude—a unanimous decision there from these representative citizens throughout the county.

I respectfully raise the question, How does the author of this bill propose to enforce such a judgment against a political subdivision of a sovereign State?

That is something I just cannot comprehend, and I raise a further question, What are the facts justifying, even if there was authority therefor, such a revolutionary step by the United States Government?

All will agree, I think, that the Federal Government should not intervene in local matters unless reasonably necessary. Whatever conditions of the past may have been, since there was only one lynching in 1947, does not this show that time and local governments and local pride and local interests have almost won the battle?

I believe, and I respectfully submit to you, that to now step in and have a Federal penalty imposed on the local government and on the local officers of the State government will kill the spirit of the entire movement by the local people and officers to eliminate lynching.

We must remember that this local effort to eliminate lynchings has almost reached perfection.

As I understand the spirit of those people I have worked with, that is one of the key points, gentlemen. That is one of the key points in the matter I want to present to you.

I have discussed this matter in all of its phases with the people and officers of many communities on many different occasions, and there is absolutely no doubt in my mind but that it will far better serve the interests of those to be protected and have the wholehearted and active interest of local people and the local officers than would be an objectionable Federal law, with the attempt to enforce it from Washington.

Senator FERGUSON. Senator Stennis, have you found this to be a fact? I do not say it should be a fact, but have you found it to be a fact: That there is more fear of violating a Federal law than there is of a violation of a State law?

I will give you an example. Take the postal regulations, and so forth. We have very little crime in relation to letters in the mail, and so forth, whereas that would be considered in the average State as a petty thing, to steal a thing, or to interfere with it.

But is not there a feeling that the Federal law has been better enforced than the State law?

Senator STENNIS. I can just speak now from my own observations and what I say is with all deference to the courts.

With the Federal probation law and a number of other regulatory matters that have come up in the last 20 years——

Senator FERGUSON. I think you have one good answer—that it was not on the prohibition law—but I think the State laws were equally badly enforced.

Senator STENNIS. I am talking about the respect for Federal law.

Senator FERGUSON. That is what I want to get.

Senator STENNIS. Coming to the probation law, and a number of other Federal regulations, which take the form of criminal law and criminal law itself, and with the suspended sentence in the Federal court, I do not think in the minds of the people now there is any more fear of Federal law than there is of State law. That is my opinion about it, and I am speaking for the area in which I live.

Senator FERGUSON. Do you not think generally there has been a better job done in the Federal courts in the enforcement of criminal laws than in the State courts?

Senator STENNIS. The prosecuting authorities in Federal courts have at their hand a much better system of investigation and greater aids.

Senator FERGUSON. That is what I am getting at.

Senator STENNIS. But when it comes to the enforcement of the law, because of the interest of the people, the spirit of the law—I do not like to compare the courts—but I think, considering the magnitude of the problem before them, the State courts have done the better job, and I say that with all respect to our Federal courts, which are very fine.

Senator FERGUSON. I know, when I was on the bench also, I considered it was the duty of the officer—the judge—to do the job, and I generally found that the law was sufficient if the administrator of the law really did his job. That is usually what happens.

Senator STENNIS. Yes.

Senator FERGUSON. It is the administrator of the law.

But has there not been a feeling that in the South the administrator of the law in relation to lynching, there has been no sympathy—not "no"; that is not the proper expression. But there has been not the same sympathy with its enforcement as with the enforcement of other laws generally.

Is not that a feeling?

Senator STENNIS. Will you restate that, Senator?

Senator FERGUSON. I will put it this way, that there is a feeling when a lynching has occurred that there is not the same desire to prosecute that crime as there is if a person has been raped. They want to enforce the penalty for rape, but if a person has been lynched in a case which has nothing to do with rape, there is not the same desire to enforce the law against lynching.

The same desire should be there, that all laws should be enforced.

Senator STENNIS. Well, those things are a matter of intensity. I think the crime of rape arouses the interests, the feelings, and the concern of the people in the South more than any other crime.

Senator FERGUSON. But is not this true: The same thing should apply to the enforcing officers? I am talking now about the enforcing officers, not the general public.

The same desire to prosecute a criminal should be there whether he is a murderer or whether it is rape.

Senator STENNIS. There are varying degrees of zeal.

Senator FERGUSON. I am talking about enforcing officers.

Senator STENNIS. I know. I think it is natural if some girl out here is ravished, there be more zeal on the part of the officers to try to apprehend the man that is guilty than if some girl is ravished and, say, a mob does lynch the guilty man—more zeal in trying to apprehend the rapist than the lyncher. That is true; yes.

I think that is human nature. I think that is true anywhere, not just in the South. It could be true under a Federal law, too.

Senator FERGUSON. Does not that take us to the next step. If you have a Federal law, the distribution of the people to enforce that law is over a greater area, and, therefore, the zeal to prosecute that person would be greater than if it was confined to a local community because your attorney general covers the whole State of Mississippi and Michigan together, being a Federal Attorney General here in Washington. He is a Cabinet officer.

And then his local officer is appointed, not by the local people exactly, but really by the President and confirmed by Congress.

Your jury is over a greater area. So you have a different law enforcement in the Federal court.

Would not that give us better law enforcement if we had a Federal crime of lynching?

Senator STENNIS. No, sir.

Senator FERGUSON. I think that is the question before us.

Senator STENNIS. I really do not think so. I feel sure of that from my area and that is based on experience.

Senator FERGUSON. Yes. You have been a judge there and you are giving your experience.

Pardon me for interrupting, but I did want to put these propositions to you.

Senator STENNIS. I am very glad to try to discuss them.

Right along that line, I do think this bill affects our serious problems connected with racial relations, and I think its enactment would totally fail to carry out its purpose and would be a tragic and far-reaching mistake. I think that is entirely possible that it would be very tragic and far-reaching.

If it is going to be passed, I hope it will not be such a tragic mistake.

Of course, I do.

Senator FERGUSON. Your State has capital punishment in first-degree murder cases?

Senator STENNIS. Yes, sir.

Senator FERGUSON. Does it have it also for rape?

Senator STENNIS. It is a question for the jury, Senator. The jury has to agree unanimously, the 12, before the punishment can be imposed.

Senator FERGUSON. They give the punishment as well as the guilty sentence?

Senator STENNIS. On that particular point.

Senator FERGUSON. In rape or murder?

Senator STENNIS. In each. In all capital cases.

Senator FERGUSON. We did not have capital punishment in Michigan.

Senator STENNIS. That is right. I remember that now.

Senator FERGUSON. But our Federal law for certain bank robberies is capital punishment, and I think that had something to do in Michigan with stopping bank robberies there.

Senator STENNIS. We passed the robbery-with-firearms law, we call it, which makes it possible to impose the death penalty even though no one is injured.

That is up to the jury, and they do not apply it except in extreme cases.

The proponents of these measures who are sincere—and I am sure a number of them are sincere—often look on these questions as being solely matters of right and wrong, and they take what they consider to be the right side; that is, the side opposed to lynching, and they honestly think that that ends the argument. I can see that point.

They are eminently correct in being opposed to lynching and are further eminently correct in being in favor of all reasonable and legal measures that tend to reduce or eliminate lynching. I certainly go with them this far in theory and in active practice and influence over the years.

I call your serious attention to the further fact that there is a practical side to this question. It is not a theory but it is a practical problem, and must be handled in practical ways, and as far as this pertains to our racial relations, I am absolutely certain in my own mind that as a practical proposition it is far better that we endeavor to make progress with the cooperative leadership and mutual respect and competence among the leaders of the respective races working together, as is the practice in my area now.

And that is where I have worked, and I have had some most delightful experiences with the leaders of the different races in the community.

They come together voluntarily. They have a great way of working these things out.

Senator FERGUSON. Is it not also true that this is a political question?

Senator STENNIS. I am not so considering it, Senator.

Senator FERGUSON. Have not recent events indicated that the question as to whether or not there will be a Federal law against lynching is a political question?

Senator STENNIS. That law that is before you here now I do not consider at all a political question, and I am not appearing here in that capacity.

Senator FERGUSON. Is there not a so-called "rebellion" in some States at the present time against a political party because it may be passed?

Senator STENNIS. The people are deeply concerned, of course, with all those laws.

But I am not looking on it here as a political matter at all. I am looking on it as an attempt to regulate the affairs of government, criminal-law enforcement in the local areas, and from the attitude of the citizen and what is best for the rule of all the people of each race.

Senator FERGUSON. Let us take the attitude of your Governor on this question. This is what he calls a political question. He is strongly, as I understand it, against any bill that would make it a crime to lynch in Mississippi. Is that not right?

Senator STENNIS. I think he is strongly opposed to the bill; yes, sir.

Senator FERGUSON. And at the present time it has become really a political question not only in the States but it is becoming a political question nationally.

Senator, that being a political question, does it not demonstrate to the people of the United States—and that is what Federal law must represent, the people of the 48 United States—if they are going to get anywhere on this question they have got to have a Federal law rather than a State law because the State officials are so opposed to the enforcement of these kind of laws by Federal Government that they feel it is the only way they can get them enforced?

There is talk there, as I understand it, now, that you are going to break away from the regular Democratic Party because of these questions.

Senator STENNIS. Senator, the Governor's objection is directed to the so-called civil-rights program as recommended.

Now, the people in Mississippi are for law enforcement, and Governor Wright is very strong for it, and very conscientious in the exercise of his responsibilities.

Senator FERGUSON. Here is the thing I have difficulty on: this proposition we are all in favor of civil rights. We all want laws so the civil rights may exist.

The difference in my view, I think, and your view and the Governor of your State. I am willing to have a Federal law and State law and local ordinance to secure to the people these civil rights. I say "secure" and not "guarantee" because I realize that Government cannot give a right to a person. They can secure to them an inalienable right, and I think one of the inalienable rights is, he should not be lynched.

I am willing to have an ordinance and State law and Federal law to do that.

You say: "We will go along with you on an ordinance and a State law, but we will not allow the civil rights to be guaranteed by the Federal law."

Why not, if it is a crime?

Senator STENNIS. Well, the objection of the Governor of Mississippi to this law is based on the interference, the encroachment, upon State affairs and State sovereignty and State powers and responsibilities.

Senator FERGUSON. Do you think this is true: That white supremacy, though, does have something to do with his attitude of not wanting a Federal law?

Senator STENNIS. I do not know just what you mean by "white supremacy."

Senator FERGUSON. We hear a lot about it.

Senator STENNIS. Here is my attitude about our relations there with the races: That we—and when I say "We" I mean those of the colored race and my race—understand the problems, the situations, better than anyone else; that we can work out and are working out the solutions better than anyone else. I am convinced of that.

Senator FERGUSON. Going back to my question, is not there some feeling by some people that if you passed Federal laws you are going to interfere with this question of what is considered white supremacy?

Senator STENNIS. I do not know just what you mean by "white supremacy."

Senator FERGUSON. You know generally what is mean by it.

Senator STENNIS. That is right.

Senator FERGUSON. Is there not a feeling like that, and is not that what is happening now, in some of your State there is a feeling that the Federal Government is going to get into this field, and if they do, and they pass these laws and they become Federal laws, that it is going to interfere with that question, and therefore they are going to the bitter end to oppose all Federal laws along these questions?

Senator STENNIS. It will interfere with the racial relations in the South. That is one reason I am so vitally concerned and so vitally interested in it. I know we have made progress, and I think we are going to continue to, but I feel certain in my mind that outside interference and encroachment will disturb those relations and set us back and cause serious trouble—cause serious trouble.

I think Governor Wright feels that way about it.

Senator FERGUSON. That means you have got a Federal judge in Mobile, and he is a resident of that district. He has been named for life by the President and confirmed by the Senate. He is one of your citizens.

You also have a Federal district attorney. He has been one of your citizens. He has been named by the President and approved by the Senate.

Now, you say, in a way, "We do not want those men to enforce the law. The jury would be from Mississippi. We do not want them to enforce the law. What we want is for our own circuit judges to enforce this kind of criminal law and our own State's attorney; and if we do not get that, then it is going to interfere with our race relations."

Is not that about what happens, and therefore it becomes a big political question?

Senator STENNIS. I think, Senator, that gets off the track of the main point here, and the main thought in the mind of the people in Mississippi.

I do not think that is the basis of their objection.

We have problems there, as in any area, and we feel very strongly that we are the ones who are going to live there, and we are the ones that are going to have to deal with them from day to day. And the practical approach for it is for the races to work together and not have some far-off superintending power or law.

I am going to cover that later in my statement here.

I tell you what we fear in my area is not the races being able to get along, we fear the outside agitator and organizer and troublemaker that comes in there and stirs those people up. That is what we fear.

Senator FERGUSON. You and I believe that the crime of lynching should be punished.

Senator STENNIS. Absolutely; yes, sir.

Senator FERGUSON. We agree on that.

But we disagree, apparently, on the question of who ought to punish it.

Senator STENNIS. The method. There is a question of power, too, Senator, the power and then the method.

Senator FERGUSON. That is where we would differ, as to who would punish.

Senator STENNIS. That is right.

Senator FERGUSON. As I said, I believe that any machinery of government all along the line should be in on this to be sure he gets punished.

I think now, probably because it is 1948, it is more or less becoming a political question as well as a question of crime.

Go ahead with your statement.

Senator STENNIS. We are as anxious to solve these problems as is anyone, and more so; and with the better understanding of these problems on the part of the peoples from other areas of the Nation, they can and will be of further aid to us.

I look forward to the day when our problems shall be better understood; therefore, more nearly solved. But then as now, Federal law, Federal control, and Federal domination will not be the answer.

I am going to omit some of this.

I want to raise this point: This is one of a series of laws of far-reaching power proposed at this session of the Congress in which the FBI is given great responsibilities. This agency has a splendid record so far as I know, and my impression is that they have rendered a great service to the Nation. But if the wings of the FBI are extended, so that the Federal police power of this Nation undertakes to supervise the administration of the criminal laws of the States from coast to coast, that date will mark, in my opinion, the beginning of the decline of the FBI.

We should consider now the possibility of that day in the future when its Director and staff may not be as highly patriotic and efficient as the men we now have there.

We should most seriously consider the dangers that can easily arise from even a slight abuse of power of a far-flung police force controlled from Washington but attempting to actively supervise enforcement of all criminal law throughout every precinct of the Nation. I do not believe that the facts justify such a step.

I believe right there that we have a very fine organization within the Government, with a splendid record. But I believe if we keep extending its powers and duties more and more and more, finally we will have something that the Congress will be afraid of, that the people, in order to carry out its tremendous powers and responsibilities, will have to be more or less intimidated in order to carry those laws through.

I do not look with favor on a greatly built-up Federal control, Washington-directed, Nation-wide police force.

Senator FERGUSON. You agree, then, at least, the enforcement of criminal law should not be a political question?

Senator STENNIS. Absolutely, I agree with that.

Senator FERGUSON. Do you know today the enforcement of civil rights is a political question because there is a rule in the Department of Justice that the FBI cannot investigate a civil-rights case until the Attorney General of the United States gives the word, and then it is only investigated as far as he desires it to be investigated?

Do you realize that in our Government today that certain crimes are considered purely political crimes?

Right at this very table yesterday that was brought out.

Senator STENNIS. I am not familiar with those phases of it.

Senator FERGUSON. That should not exist. It should be a crime, and after it is made the law it ought to be the law whether or not the Attorney General likes it or not.

It is the law until repealed by the Congress. But that is not true today, as I heard the testimony yesterday. It becomes a political question and a Cabinet officer says as to whether or not a certain crime should be punished.

Senator STENNIS. Because of the questions, I have not covered some of the points I have here in writing.

I want to come back to this point.

We, the members of both races, know our problems better than anyone else in the world, and I believe we can work out the best solutions. We are doing that.

The better leaders and thinkers of each race know and have confidence in each other.

I state that as a fact.

We do not fear each other. We fear the crank, the outside meddler, and the paid agitators who make their living by stirring up strife and enmity among the races there and elsewhere.

I know these bills are supported by many highly patriotic people. I do not at all question their motives. I just think they fail to see the problem in its full true light, and I plead for future time for the patriotic leaders of both races in the South to continue their splendid progress without interference or set-back.

I believe, and most sincerely submit to this committee, that the progress made by the two races in the South for harmony and concord and progress and mutual benefit for the past 82 years has never been equaled in the history of the world where such large numbers of people were involved, and living in such close proximity to each other.

The problem was made immeasurably greater by the unfortunate reconstruction days. I do not say that in criticism of anyone. It was just made unfortunately greater by the problems of reconstruction days.

Do not inflict the races with such an artificial and unnecessary burden again.

Senator, if I can answer any questions, I will be glad to.

Senator FERGUSON. Senator Stennis, I feel that your statement, without interruption and complete, should appear in the record.

We will therefore ask the reporter copy it in at this point.

(The statement is as follows:)

Gentlemen of the committee, first, I want to thank you for this chance to appear here today. My remarks shall be directed to S. 1352.

I make no perfunctory appearance here today, but am here because I believe with all my mind and with every patriotic impulse that I have, that this bill is entirely unconstitutional, and regardless of the good faith and high motives of its authors, it is far beyond the powers of the Congress to enact such legislation. In my humble opinion, these bills strike at the very foundation of one of the vital, fundamental principles of our great Government—that is, the rights and responsibilities of the respective States of the Union. I think it is high time that we go back and consider some of the fundamentals upon which our form of government was founded by the various groups following the Revolu-

tionary War. We had the Puritans, the Dutch, the Quakers, Catholics, the English, and many other groups, all with their different views and with their different local needs. They all felt the need of, and they agreed to, a union of the States, but they very definitely did not surrender their internal affairs; they created a government of limited powers only, and kept clear the line of separation between the States and the National Government, and to be sure, they provided in the tenth amendment: "The powers herein not expressly granted are reserved to the people and to the States." The people and the States have never repealed that amendment and I do not think that they would do so now if the matter was directly submitted to them. These bills do propose to repeal that amendment piecemeal.

I do not believe that the States would have ever agreed to a Constitution at all if it had not been for a clear understanding regarding the separation of these powers; further, I do not believe that our Government would have grown to the great power that it is if it had not been divided into many separate State units; further, I do not believe that it can, or will long endure as a great power when that division of State and Federal responsibility and power is removed. I, therefore, strongly feel that I speak for both the Federal and State governments when I oppose this measure.

I have been a lawyer by profession for 20 years. I have spent the last 16 years of that time in the courtroom, 5 years as district prosecuting attorney, and 11 years as a trial judge of a civil and criminal court of unlimited jurisdiction, the circuit court. This has given me the most direct and intimate and continuous contacts with court officials, county officers, jurors, and rank-and-file citizens, and with those charged with crime and those convicted of crime. These have included the red man, the black man and the white man. My conclusion is that the real strength of our Government is found, not in Washington, but in the 3,000 and more county courthouses scattered throughout the length and breadth of our great land, where the people have the responsibility of administering their own affairs according to their own laws and according to their own needs and conditions, and not by some pattern supplied by far-away government. In local government, the people feel their personal responsibilities as citizens. I have found that the strongest appeal we have to the individual citizen is the appeal to him to do his part in his local unit of government in making democracy work. It seems clear to me that when we take this responsibility away from the local citizen, and further, when we act to brand his community as criminal and impose a penalty thereon because of some crime therein, then we are inviting the individual citizen to neglect and lose interest in his local responsibilities in local affairs.

I am shocked at the idea of this bill seeking to impose a criminal fine on a political subdivision of a sovereign State of the United States. It is the creature turning on its creators, with designs of punishment in what seems to me to be a gross invasion of the sacred sovereignty of a State. This is an extreme step to take, as any lawyer will agree, and I respectfully ask the authors of this bill, By what grant of authority do you expect the Congress to proceed?

Gentlemen of the committee, I do not believe there can be presented one line of sound legal authority for section 8 of this bill which proposes to impose a fine against a governmental subdivision of a sovereign State. And I respectfully ask the author of this bill now to present his authorities, if any he can, for this bold proposition of suing a State for such purposes. Frankly, I have not been able to find one single line of respectable authority for this proposition, and on the other hand, I find a great abundance of authority to the contrary and shall submit the cases to this effect in a supplemental statement.

Gentlemen of the committee, I respectfully raise the further question, How does the author of this bill propose to enforce such a judgment against a political subdivision of a sovereign State?

And I raise the further basic inquiry, What are the facts justifying, even if there was authority therefor, such a revolutionary step by the United States Government? All will agree, I think, that the Federal Government should not intervene in local matters unless reasonably necessary. Whatever conditions of the past may have been, since there was only one lynching in 1947, does not this show that time and local governments and local pride and local interests have almost won the battle?

I believe, and I respectfully submit to you, that to now step in and have a Federal penalty imposed on the local government and on the local officers of the State government will kill the spirit of the entire movement by the local people

and officers to eliminate lynching. We must remember that this local effort to eliminate lynchings has almost reached perfection. I have discussed this matter in all of its phases with the people and officers of many communities on many different occasions, and there is absolutely no doubt in my mind but that it will far better serve the interests of those to be protected, and have the wholehearted and active interest of local people and the local officers, than would be objectionable Federal law, with the attempt to enforce it from Washington.

As a matter of principle in government, I am strongly opposed to this bill, not because of its ultimate objectives but because of its invasion of a field of government, where the responsibilities therefor lie directly on the States. But also, as the bill affects our serious problems connected with racial relations, I think its enactment would totally fail to carry out its purpose and would be a tragic and far-reaching mistake. The proponents of these measures, who are sincere—and I am sure a number of them are sincere—often look on these questions as being solely matters of right and wrong, and they take what they consider to be the right side—that is, the side opposed to lynching—and they honestly think that that ends the argument. They are eminently correct in being opposed to lynching and are further eminently correct in being in favor of all reasonable and legal measures that tend to reduce or eliminate lynching. I certainly go with them this far, in theory and in active practice and influence over the years.

I call your serious attention to the further fact that there is a practical side to this question. It is not a theory, but it is a practical problem and must be handled in practical ways; and as far as this pertains to our racial relations, I am absolutely certain in my own mind that as a practical proposition it is far better that we endeavor to make progress with the cooperative leadership and mutual respect and confidence among the leaders of the respective races working together, as is the practice in my area now. Splendid results could be shown there now. We are as anxious to solve these problems as is anyone, even more so; and with the better understanding of these problems on the part of the peoples from other areas of the Nation, they can and will be of further aid to us. I look forward to the day when our problems shall be better understood; therefore, more nearly solved; but then, as now, Federal law, Federal control, and Federal domination will not be the answer.

In my long contact with county, State, and city officials, I have found them, by and large, to be men of character and fair ability. I think it will kill their pride and arouse their resentment for the Federal Government to attempt to put all these officers in a strait-jacket regarding the performance or attempted performance of their duties and to hang over their heads the threat of making convicts or felons out of them if they are found guilty by some far-removed court of what someone else may deem to be negligence in their performance of their official duties as State officers.

This is one of a series of laws of far-reaching power proposed at this session of the Congress in which the FBI is given great responsibilities. This agency has a splendid record, so far as I know, and my impression is that they have rendered a great service to the Nation. But if the wings of the FBI are extended so that the Federal police power of this Nation undertakes to supervise the administration of the criminal laws of the State governments from coast to coast, that date will mark, in my own opinion, the beginning of the decline of the FBI. We should consider now the possibility of that day in the future when its Director and staff may not be as highly patriotic and efficient as the men we now have there. We should most seriously consider the dangers that can easily arise from even a slight abuse of power of a far-flung police force controlled from Washington but attempting to actively supervise enforcement of all criminal law throughout every precinct of the Nation. I do not believe that the facts justify such a step.

This act purports to have Congress create the following causes of action arising from lynching:

1. Civil actions against individuals.
2. Civil actions against State governmental subdivisions.
3. Civil actions against State officers.
4. Criminal actions against private citizens.
5. Criminal actions against State officers.

I submit that there is not one scintilla of respectable authority to sustain either 1, 2, 3, or 4 above; and, on the contrary, there is express and direct authority to the effect that Congress has no such authority whatsoever.

The precise legal question presented is: What section or clause of the Constitution of the United States expressly or by necessary implication confers power on the Congress to pass such legislation?

The bill must be bottomed on some specific definite grant of power. This is the test, because the tenth amendment provides:

"The powers not herein expressly granted are reserved to the people and to the State."

The only pretended authority ever presented as a legal basis for the bill, so far as I have heard, has been the fourteenth amendment, particularly the "due process of law" and "equal protection of the laws" clauses. So-called civil rights bills were passed following the adoption of the fourteenth amendment, and those bills were passed on by the Supreme Court of the United States. The opinions definitely fixed the meaning and the limitations of the fourteenth amendment and limited the amendment to corrective legislation to be applied to the States, or to officers and agents of a State, when attempting to enforce State law or regulations that were themselves in contravention of the fourteenth amendment. The conduct of private individuals, and the conduct of State officers acting under valid State laws, was conduct the Congress did not even try to cover by the civil rights statutes following the adoption of the fourteenth amendment. This was well settled by a long and uninterrupted line of decisions by the United States Supreme Court, and of which *United States* v. *Harris* ((1882) 106 U. S. 629), Revised Statutes, section 5519, passed soon after the adoption of the fourteenth amendment, made it a criminal offense for two or more persons to go on the premises of another for the purpose of depriving them of the equal protection of the laws, or of hindering State officers from securing to all persons the equal protection of the laws.

In a case involving the prosecution of individuals under the act, all kindred legal questions under the fourteenth amendment were fully considered, and the act was declared unconstitutional and void, as it was beyond the power of Congress to enact legislation under the fourteenth amendment to control individual conduct.

The next year the *Civil Rights cases* ((1883) 109 U. S. 3) were before the Court under a congressional act providing for equal rights and privileges for all races at theaters and other such places. After full consideration of the extent of congressional authority under the fourteenth amendment, the Court again held that Congress had no power thereunder to control individual conduct.

The foregoing cases represent the fundamental principles of the legal questions involved. The cases have not been overruled and are now the supreme law of the land.

These established legal principles leave the entire bill without any legal foundation whatsoever, except the sole provision with reference to a criminal action against an officer of a State acting "under color of law," which is fully considered in the recent case of *Screws* v. *U. S.* ((1945) 325 U. S. 106), in which there was a sharply divided Court and a strong dissenting opinion. In that case State officers had a prisoner in custody for the alleged theft of a tire and whipped the prisoner to the extent that he died from the beating. The Court held that section 20 of title — applied: That the officers were acting "under color of law" when they administered the injury and were criminally liable under the act; the case was reversed, however, because of a faulty instruction. I submit that these officers were not acting "under color of law" in the sense intended by the statutes and therefore submit, with deference, that the Court erred in applying the facts.

The proposal to have a Federal statute impose a money fine on a subdivision of a sovereign State regarding the negligent enforcement of a State law does not have a semblance of legal sanction or authority in any phase of American jurisprudence. The old England law, as I recall, provided for a penalty on a community for a crime committed therein, to be collected by the Crown; and by like reasoning, perhaps a State of the United States could impose a like penalty on one of its own subdivisions. But certainly the States which created the Federal Government, and then expressly reserved all powers not granted to themselves and to the people, cannot now be subjected to a money fine regarding the use of its own reserved powers unless it consents thereto.

* * * * * * *

Insofar as this measure may pertain to the racial relations in the South, let me make this additional observation: All races are making splendid headway in

the South and are cooperating. We, members of both races, know our problems better than anyone else in the world, and we can work out the best solutions. We are doing that. The better, calmer leaders and thinkers of each race know and have confidence in each other. We do not fear each other. We fear the crank, the outside meddler, and the paid agitators who make their living by stirring up strife and enmity among the races, there and elsewhere. They further benefit themselves by gross misrepresentations, and some of them seek to mislead the Congress. I know these bills are supported by many highly patriotic people; I do not at all question their motives.

I just think they fail to see the problem in its full, true light. I plead for further time for the patriotic leaders of both races in the South to continue their splendid progress without interference or set-back. I believe, and most sincerely submit to this committee, that the progress made by the two races in the South for harmony and concord and progress and mutual benefit for the past 82 years has never been equaled in the history of the world where such large numbers were involved. The problem was made immeasurably greater by reconstruction days. Do not afflict the races with such an artificial and unnecessary burden again.

We must remember we are not dealing with theories nor ethics nor moral questions. We are dealing with a practical problem. We are not establishing rules of conduct to regulate ourselves here in the calm, cloistered walls of the Senate Chamber or in our office building. We are establishing rules of law for the daily conduct of all kinds of people out in the practical affairs of life—in the market places of the cities, on main streets of the small towns, at the cross-roads of the countryside, and everywhere throughout the Nation where people of all kinds and races mix and mingle together in the struggle for a living. One strait-jacket rule, one strict pattern, will not work for the industrial East and the agricultural South. Give us a chance to continue our fine progress in my area.

Senator FERGUSON. Senator Stennis, I appreciate your coming here and giving me your views.

Senator STENNIS. I certainly appreciate the opportunity of being here and discussing it with you.

Senator FERGUSON. Let the record show that at this point the hearings on antilynching legislation are closed, with the exception of filing of statements and substantiating data.

(Whereupon, at 11:50 a. m., the committee recessed.)

APPENDIX

The committee files contain scores of letters, telegrams, postals, and testimonals from private individuals, labor groups, church groups, and citizen organizations recommending passage of antilynching legislation. In the interest of conservation of space and printing costs, the above material is not included in the printed hearings. It does, however, remain as part of the public records of the files of the committee open to the scrutiny of interested parties.

BRIEF OF ATTORNEY GENERAL OF THE STATE OF FLORIDA ON CONSTITUTIONALITY OF S. 1352 AND S. 42, DESIGNATED AS "FEDERAL ANTILYNCHING ACTS"

There is now pending in the Senate of the United States of America S. 1352 and S. 42.

Each of these acts is properly designated as Federal Antilynching Act. A careful study of each of these bills shows clearly that practically all of the provisions of S. 42 are included in S. 1352, which latter act is a great deal broader than the former.

Both of these acts are emphatically bottomed on the provisions of the fourteenth amendment to the Constitution of the United States. S. 1352 goes even further in attempting to justify the act by providing that one purpose is to promote universal respect for, and observance of, human rights and fundamental freedoms for all under the treaty obligations assumed by the United States under articles 55 and 56 of the United Nations Charter.

The assumption by the National Congress that it has the power to enact into law these proposed antilynching bills under either the provision of the fourteenth amendment to the Constitution of the United States or the United Nations Charter is unwarranted; for it must be kept in mind that the individual sovereign States are not creatures of the Federal Government; but, on the contrary, the Federal Government is a creature of the several States and is sovereign only in those fields where express powers have been granted by the States in the Constitution and its amendments, the States remaining sovereign within their own boundaries in all matters of internal concern where they have not expressly relinquished their powers. If this could be written loud enough to sink into the thought of the Members of both House and Senate of our National Legislature, it is believed that a great change would take place in the Congress' growing disposition to make the Federal Government dominate the State governments in so many fields of improper national intervention.

The provision contained in the fourteenth amendment to the Constitution under which the acts are specifically drawn is as follows:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Articles 55 and 56 of the United Nations Charter, under which the National Congress assumes to act, are as follows:

"ART. 55. * * * The United Nations shall promote (c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

"ART. 56. All members pledge themselves to take joint and separate action in cooperation with the organization for the achievement of the purposes set forth in article 55."

We will first endeavor to demonstrate that the enactment into law by the National Congress of either of the acts in question would be a most unwarranted

invasion of States' rights under the Constitution, and then we will later show that the provisions of the United Nations Charter could in now way be involved nor form a basis for legislation by Congress when such rights are not given to the Federal Government by express provision of the Constitution of the United States.

S. 1352, being the broader of the two bills and embodying practically all provisions of S. 42, will be considered.

It will be noted that this bill in section 1 thereof makes certain findings and policies. Subparagraph (a) finds that the duty of each State to refrain from—and here the act refers to the fourteenth amendment—depriving any person of life, liberty, or property without due process of law, and from denying to any person within its jurisdiction the equal protection of the laws, imposes upon each State the obligation to exercise its police powers in a manner which will protect all persons equally without discrimination because of race, creed, color, national origin, ancestry, language, or religion. Such finding is not supported by the fourteenth amendment for the fourteenth amendment is very emphatic in its statement "* * * nor shall any State deprive * * *" and then "* * * nor deny to any person equal protection of the laws. * * *" This clearly indicates that the State shall not deprive by positive action nor deny by positive action the things enumerated in the fourteenth amendment.

This section then emphatically states that the State has by positive action actually deprived a person of life, liberty, or property and equal protection of the laws when the State's inaction has the effect of discriminatory withholding of protection. This finding is attempted to be justified by the statement immediately following when the act finds that a State by the malfeasance or nonfeasance of its officials permits persons not expressly designated as its agents to punish any person for crimes or alleged crimes without trial or other due process and condones such conduct by participating in or facilitating such conduct or by failing to punish either those of its officials who permit such conduct or those guilty of the conduct, effectively deprives the victims of life, liberty, or property without due process of law and denies them equal protection.

How this finding can be justified is a mystery in itself, because it so contorts the positive provisions of the Constitution of the United States as to make the act of one city, county, or State police officer the positive and direct action of the State itself in depriving persons of life, liberty, or property without due process and positively denies to them equal protection of the laws. Such a finding cannot be sustained because the police officers involved owe their duties to the State and not to the Federal Government.

The Constitution and laws of the State of Florida amply define and determine the powers, duties, and liabilities of the State police officers. It is unquestioned that a sheriff or constable in the State of Florida may be suspended by executive order of the Governor on grounds of neglect of duty, incompetency, malfeasance, and misfeasance (Florida Constitution, art. IV, sec. 15). It is also unquestioned that a sheriff or constable for any misfeasance or nonfeasance in office may become liable on his bond or be subjected to a suit for damages by the person or persons injured thereby and he is not relieved from liability for his wrongful acts on the grounds that he is a sheriff or constable (*Holland* v. *Mayes*, 19 So. (2d) 709, 155 Fla. 129).

Chapter 250, Florida Statutes, 1941, provides for the formation of the Florida National Guard. Section 250.38, Florida Statutes, 1941, provides:

"When an invasion or insurrection in the State is made or threatened, or whenever there exists a riot, mob, unlawful assembly, breach of the peace or resistance to the execution of the laws of the State, or there is imminent danger thereof * * * the Governor, or in case he cannot be reached and the emergency will not permit of awaiting his orders, the adjutant general shall issue an order to the officer in command of the body of troops best suited for the duty for which a military force is required directing him to proceed with the troops under him, or as many thereof as may be necessary, with all possible promptness, to suppress the same."

The Governor of the State of Florida, as such, is designated by the laws of Florida as the commander in chief of the militia. Let us assume that a man had been arrested for some heinous crime in some remote section of the State of Florida and was being held by the sheriff of the county; that the sheriff was advised and had reason to believe that a mob was forming for the purpose of taking the prisoner from him and lynching the prisoner. Let us assume further that the sheriff with this apprehension in mind immediately called the Governor of the State of Florida and requested that the National Guard be sent to assist him in protecting and holding the prisoner. The Governor, after considering all

the facts available to him, did immediately order the National Guard to the assistance of the sheriff and the National Guard proceeded by motor trucks to the point directed but before they were able to reach the scene the mob had accomplished its purpose, taken the prisoner and had killed him.

Information was then transmitted to the Attorney General of the United States who immediately ordered an investigation thereof and upon such investigation determined in his own mind that the Governor of the State of Florida had neglected to make "all diligent efforts" to protect the prisoner under section 7 of S. 1352 and instituted criminal proceedings against the Governor of the State of Florida under the provisions of 6 and 7 thereof, on the ground that the urgency of the matter demanded that the troops be sent by airplane for the assistance of the sheriff and not by motor truck. It would then be placed within the power of a jury to convict the Governor of the State of Florida of a felony under this so-called antilynching act, subject him to a fine of $5,000 and imprison him in a Federal penitentiary for a period of 5 years.

In further carrying out the provisions of this act the Attorney General of the United States, in the name of the United States, for the use of the heirs of the decedent instituted civil proceedings under section 8 against county X wherein the sheriff involved held his official position and alleged in the complaint so filed that when the mob gathered and approached the jail wherein the prisoner was being held the only person or persons within the sight or hearing of the sheriff other than the members of the mob were three men. The sheriff called the three men and demanded that they immediately come inside the jail, take guns from the gun rack and assist him in the defense of the prisoner even to the point of being killed by the mob; that two of the three men turned and fled. The complaint demanded of county X $10,000 damages under section 8, providing for compensation by such governmental subdivision to the party lynched if injured and to his heirs if he is killed. This section of the act provides that the county does have a defense but only one defense and that is an affirmative one whereby the county may plead and must prove "by a preponderance of evidence" that not only the officers thereof charged with the duty of preserving the peace but that the citizens thereof when called upon by such officer "used all diligence and all powers vested in them" for the protection of the person lynched. Clearly then the failure of these two cowardly men, as citizens and residents of the county, to accede to the demand of the police officer and to bear arms in defense of a prisoner and either kill or be killed would render the county liable.

Section 23, article V, of the Florida Constitution provides for the election of a constable by the registered voters in each justice district who shall perform such duties and under such regulations as may be prescribed by law.

Section 21, article V, of the Florida Constitution provides that the county commissioners of each county may divide the county into as many justice districts as they may deem necessary.

Section 6, article VIII, of the Florida Constitution provides that the Legislature of the State of Florida shall prescribe for the election by qualified electors in each county certain county officers among which appears "constable."

Therefore a constable is declared by the Florida Constitution to be a county officer. There may be as many as 25 or more justice districts in a county. Each constable is elected only by the qualified electors in the particular justice district in which he seeks office. We therefore have a police officer elected by only a small part of the county yet designated as a county officer.

We will change the demonstration given above and in place of the sheriff we shall have a constable. Under the same act of facts this constable's neglect of duty would impose upon the entire county a judgment of $10,000 which must be paid for by taxation of each taxpayer in the entire county, for a justice district in a county is not a political subdivision of the State.

Article 5 of the amendments to the Constitution of the United States provides, among other things, "no person * * be deprived of life, liberty, or property without due process of law."

Clearly then this antilynching legislation by the National Congress would be totally unconstitutional and null and void for it would unquestionably deprive the other taxpayers in the county of their property without due process of law because the constable would be a public officer elected only by the qualified electors in his particular justice district.

The findings and policy of the act decides what acts constitute a lynching in the following manner:

"Lynching constitutes an organized effort not only to punish the persons lynched but also to terrorize the groups in the community or elsewhere of which the persons are members by reason of their race, creed, color, national origin, ancestry, language, or religion and thus to deny to all members of such groups and to prevent them from exercising the rights guaranteed to them by the Constitution and laws of the United States."

I can conceive of no reasoning by which this finding can be justified for in its actual application it is totally false, for the one lynched may be of English origin, a white man, a Catholic, and speak the English language, so how could the lynching of this man constitute an organized effort to terrorize the groups in the community or elsewhere of which he is a member by reason of race, color, national origin, language, or religion? Certainly there could be no organized effort to terrorize all Americans of English ancestry of the white race who speak the English language and whose religion is Catholic.

This finding is followed by a statement regarding a State's condoning lynching. I cannot understand how a State, as such, could under any circumstances condone an act of this sort when the State itself by its constitutional provisions and its laws expressly prohibits such acts. Finding (b) then proceeds to contradict the other findings of the entire act for finding (b) even departs further from the fourteenth amendment by making the acts of individuals within a State and without the condemnation by the State or its officials a denial of equal protection of the laws and is denial or limitation of human rights and fundamental freedoms. Not so, for this is a question of internal affairs of a State. It is purely a private quarrel between individuals and is punishable under the criminal laws of the State but involves no constitutional provision of either a State or the United States. Finding (c) is to the effect that the law of nations requires that every person be secure against violence to himself or his property by reason of his race, creed, color, national origin, ancestry, language, or religion. The so-called law of nations containing this provision cannot under any form of reasoning constitute a grant of power by the States to the Federal Government upon which the National Congress could pass legislation that directly conflicts with positive provisions in the Constitution. If this were the case it would give the power to Congress, by treaties with foreign nations, to completely nullify and destroy the Constiution of the United States and to delegate to itself powers as great as those possessed by any totalitarian nation on earth. It could through its treaties completely destroy our form of government by giving to itself the power to enact any law that it might see fit to enact without any regard whatsoever to the Constitition.

Section 3 provides that it is the right of every citizen to be free from lynching. With this statement and with this section of the act we agree. It is no more than a statement of what has always been the law and of which every person, even a child, is familiar.

Section 4 defining a lynch mob defines it as "any assemblage of two or more persons" who commit certain acts as provided therein or attempts to commit these acts of violence upon any person or persons or on his or their property because of his or their race, creed, color, national origin, ancestry, language, or religion. Such a definition would unquestionably open the way for a flood of claims simply because the victim lynched or attempted to be lynched or who had his property damaged under the circumstances therein described was a Negro, a Jew, a German, or a member of any other race; because he was a Catholic, a Baptist, a Methodist, or a member of any other creed; whether he spoke the Jewish language, German, Italian, or English. Who is to decide whether such act or attempt was done because of these facts? Certainly it would be an erroneous assumption to assume that because the person was a Negro that this was the reason for lynching or attempted lynching.

Section 6 of the act provides for the punishment for failure to prevent a lynching. There is no earthly way under this provision of the act to determine what constitutes "all diligent efforts" to prevent a lynching. What might be "all diligent efforts" in the mind of one man might be a great deal different than that in the mind of another. No yardstick by which to measure such efforts is provided. This provision is so uncertain and so indefinite in its terms and in is provisions that it is impossible of enforcement. It cannot be judicially construed to mean reasonable effort for its very terms contradict this construction. Who know what constitutes "all diligent efforts" in the mind of the police officer upon whom is imposed the duty to protect a prisoner? In his own mind he might in all honesty believe that the course that he has taken and the efforts

that he has expended in protecting a prisoner constituted every reasonable effort in that behalf.

In the mind of one man "all diligent efforts" might well mean that it was the duty of the officer so charged to defend the prisoner even to the point of laying down his life in his defense. In very few, if any, of such cases could the officer accomplish more than the killing of one or two of the mobsters and being killed himself. Mobs formed with the purpose of lynching an individual are uncontrollable and beyond all reason and are always heavily armed. To expect an officer charged with the duty of protecting a prisoner to attempt singlehanded to fight off a mob of 10, 20, or 30 heavily armed men who will tolerate no interference with their plan would be expecting that of the officer which is far beyond his duty to society and it has been so held by the courts of last resort of practically every State in the Union and by the Supreme Court of the United States.

Section 8 of the act is just another attempt to do indirectly that which cannot be done directly. It attempts to make the acts of a police officer in a city or town the act of the State itself under the apparent theory that each governmental subdivision of the State is the State. To come within the purview of the fourteenth amendment it must be clear that the State as such deprives the person of life, liberty or property without due process of law or denies to any person within its jurisdiction the equal protection of the law. There is no provision in the Constitution under which the action of a police officer of a town or city could be considered as the positive action of the State itself in depriving a person of life, liberty, or property without due process of law or as denying equal protection. The case of *United States Mine Workers* v. *Chafin*, (286 Fed. 961) in no uncertain terms sets this question at rest.

Section 8 (2) provides among other things that when certain facts have occurred in conflict with the provisions of the act the Attorney General shall bring and prosecute the action in the name of the United States for the use of the real party in interest against the political subdivision of the State. In the State of Florida a county is immune from civil actions for damages arising in tort. To justify the provisions of this act the bill, in effect, alleges that the action of the officers of the county, and in fact positively so holds, is the act of the State itself and provides for a suit against the political or governmental subdivision of the State which includes counties and is in effect a suit against the State. Yet, article 11 of amendments to the Constitution of the United States provides that the judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another State or by citizens or subjects of any foreign state. This lack of power cannot be cured under the flimsy excuse that the suit is brought in the name of the United States, for it is brought in this manner, by the express terms of the act, for the use and benefit of the real party or parties in interest which might or might not be a citizen or citizens of another State or a citizen or subject of a foreign state.

S. 42 is almost entirely embodied within S. 1352 and any discussion of the shorter act would serve no useful purpose for the above would be applicable to this act as well as to the longer one.

We cannot, therefore, escape the conclusion that either of these acts would be unconstitutional and in fact would be no act at all for either of them would be a direct invasion of States rights as retained by the 48 States of the Union and not relinquished to the Federal Government. It would be an exercise by the Congress of the United States of America of powers not conferred upon it by the Constitution and would in fact usurp the powers of the individual States expressly reserved to them and each of them.

J. TOM WATSON,
Attorney General.
J. LUTHER DREW,
Assistant Attorney General.

BRIEF FOR THE ATTORNEY GENERAL OF MISSISSIPPI ON BEHALF OF THE PEOPLE OF THE SAID STATE IN OPPOSITION TO SENATE BILL NO. 1352, EIGHTIETH CONGRESS, FIRST SESSION, KNOWN AS THE FEDERAL ANTILYNCHING LAW

It is the contention and belief of the attorney general of Mississippi that the above-named bill, known as the Federal Antilynching Act, is unconstitutional because no grant of power to the Federal Government is contained in the Constitution of the United States granting power to punish crimes committed in the

several States. Also, that the said bill is unconstitutional because it seeks to impose penalties and liabilities on the States or their subdivisions when there is no grant in the Federal Constitution authorizing such act. The bill is unconstitutional further in that it undertakes to authorize suits against the States or their subdivisions contrary to the eleventh amendment of the Constitution of the United States. It is unconstitutional because it undertakes to create liberties and the rights of action in favor of private persons for private injuries when there is no such power vested in the Federal Government.

(*a*) American system of government with its divisions of power between the States and the Nation and by securing the rights of citizens for the oppression of citizens by the Government makes this the best government in the world.

The bill ignores the distinction between the powers reserved to the States on the one hand and powers delegated to the Federal Government on the other hand. In the beginning of our Government, the Thirteen Original States were independent of each other and each had full powers of government over all matters within its Territories and each State was a sovereign vested with all the powers of government unless restrained by its own constitution and charter of government. There was an attempt to give the Federal Government powers under the Articles of Confederation but the National Government had neither the power of taxation of citizens nor the right or power to equip armies or civil officers who would have any power to coerce a State or the citizens thereof.

When the Constitutional Convention met at Philadelphia in 1787, to frame a constitution to create a National Government with proper powers as such, and recognized the necessity of a national Government with limited powers only pertaining to international or interstate business relations and transactions while at the same time it recognized that the rights of local government should be secured to the people within the limits of the States then existing or thereafter to be created under the provisions of the National Government. It was understood by the founders of our Government that the National Government would only have powers delegated to it by the Constitution and that all other powers than those delegated were retained by the States and that the National Government could make no law or exercise any power except those actually delegated to it by the Constitution or such implied powers as might be found necessary and proper from the exercise of the powers actually delegated. In the original Constitution powers to be exercised by the National Government were specifically granted in article 1, section 8, clauses 1 through 18. In section 9 of article 1 certain specific prohibitions were provided, being named therein, forbidding certain powers mentioned therein from being exercised by the general or Federal Government and these were known as prohibitions on the National Government.

In section 10 of article 1 of the original Constitution certain laws were prohibited from being enacted by the States. By these prohibitions it was intended to reserve to the people all power over such subjects, each government being prohibited to act in reference to said matter unless and until a constitutional amendment should be adopted authorizing such action to be taken by the Government.

The Federal Government secured a few rights to the people but had no Bill of Rights such as those contained in the first 10 amendments to the Constitution adopted by said amendments which were shortly ratified after the Constitution originally adopted was ratified. In many of the ratifying conventions the absence of the Bill of Rights was commented on and it was urged by many that the Constitution should not be ratified without such a Bill of Rights to control the National Government and its activities. The proponents of ratification insisted that Congress could make no law except as specifically authorized by the powers granted to the National Government by the Constitution. It was promised by many who sought ratification that such Bill of Rights would be proposed as amendments and ratified and the ratification was secured by these promises evidenced by resolutions of the conventions pledging the enactment of a suitable Bill of Rights. The debates in the Venton of Virginia were able and heated and the forces of ratification and the force of those against ratification were nearly equally divided. Shortly after the original Constitution was ratified the 10 amendments were proposed and carried. By article 10 of which amendments it was provided that all powers not granted to the United States by the Constitution or prohibited the several States by the Federal Constitution were reserved to the States or to the people. The effect of this amendment reserved to the States all powers not especially granted to the United States Government and that the Federal Government could not enact laws for the general policing of the States. As to these reserved powers, the States had full power of l[illegible]

lation subject only to the prohibitions contained in the Federal Constitution and in the Constitution of the States themselves withholding from the legislative bodies powers which it was believed should not be exercised by the legislatures of the States themselves. Also the National Government and the governments of the several States further divided power by giving to three separate departments of Government particular powers. The powers in each case were classified: First, legislative; second, executive; and third, judicial. The whole purpose was to secure a government of laws as against the government by caprice or whim or as it is sometimes expressed, "a government by men." When these provisions of our system have been carefully studied or are fully known or observed by those in authority, we have a government founded on the consent of the people and by the constitutional powers termed the Bill of Rights, we have our liberties safeguarded from violation. No other government protects its people so fully as our own. It is complex but safe. It takes study and research to understand fully the great Government that we have.

That consent of the people for such a government being manifested by specific provisions of the Constitution, those who exercise powers of government should observe with the utmost care and caution the provisions of the Constitution. They should not undertake to set them aside or violate them to meet an imaginary or real evil except by those authorized by the constitutional system to deal with it. The enactment of laws regulating transactions between separate persons living in our organized society or generally known as the police powers, and are, so far as the States are concerned, governed by the local government. In 16 CJS 125, it is said:

"The Federal Constitution is a grant of powers, and Congress possesses only such powers as are granted expressly or by implication. Construction should be neither unduly strict nor loose, but should be fair and reasonable.

"In respect of internal affairs, the Federal Government derives its authority from the Constitution of the United States. The Constitution is a grant or delegation of power, and in general the Federal Government is one on enumerated and delegated powers, and possesses only such powers as are conferred by the Constitution either expressly or by implication."

Thus, Congress possesses only such powers as are granted by the Constitution. A power enumerated and delegated to Congress is, however, comprehensive and complete without other limitations than those found in the Constitution itself. The powers which are implied under the Constitution are such as are necessary and proper for the exercise of a power expressly granted. Governmental power is not delegated by implication to the National Government except as stated above. All powers not so delegated belong to the States and the States alone can exercise such power. The prohibition of all power to the States does not, by implication, grant that or those powers on the Federal Government. Where the States have not exercised a power belonging to them the National Government cannot supply by its enactment such laws.

After the Civil War, the thirteenth, fourteenth, and fifteenth amendments were adopted by the States as resisting prohibitions on State action, but not granting the Federal Government the power prohibited to the States. Where a State does not pass or enforce a law or laws, the power remains unexercised.

The State of Mississippi has a statute prohibiting murder or any other offense against society and a lynching where death occurs is murder under the State law contained in section 2215 and 2217 of the Code of 1942. It does not matter how many persons take active part in murdering a man for each are guilty of the crime of murder under said act. Where murder is committed in the State the penalty is either death or life imprisonment if the party is convicted in the courts of the State. An agreement or conspiracy to commit a crime is prohibited by section 2056 of the Code of 1906. This section is effective whether the conspiracy is carried out or not.

Under section 1195, Code of 1942, every person who shall be an accessory to any felony, before the fact, shall be deemed and considered a principal and shall be indicted and punished as such and this shall be whether the principal has been previously indicted for a crime and convicted or not. This makes accessories before the fact by common law a principal and punishable to the same extent as if he had personally committed the murder or other crime.

By section 2017, of the Code of 1942, every person who shall design and endeavor to commit an offense and shall do any overt act toward the commission thereof but shall fail therein or shall be prevented from committing the same shall be punished as follows: If the offense attempted to be committed be capital, such offense shall be punished by imprisonment in the penitentiary not exceeding 10

years and if the offense attempted be punishable by imprisonment in the penitentiary or by fine and imprisonment in the county jail, the attempt to commit such offense shall be punished for a period or for an amount not greater than is prescribed for the actual commission of the offense so attempted.

It will be seen from these sections that Mississippi has statutes prohibiting every phase of the crime called lynching. I presume that every other State in the Union has statutes covering every phase of a lynching similar to our statutes in this State. There is therefore no necessity for a Federal enactment even if the Federal Government had the power to enact or make such enactment effective; which it has not.

If the above-mentioned Federal antilynching law is attmpted under the fourteenth amendment, it will be noted that the language of the fourteenth amendment is that: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The language is a prohibition on the State and not a grant of power to the National Government.

Shortly after the fourteenth amendment became effective, it was contended in a number of cases that under the power to enforce the amendment by appropriate legislation that the Federal Government could enact under its own authority laws to punish the persons denying the privileges and immunities of citizens. This contention was especially denied by the Supreme Court of the United States in what is known as the civil rights case (109 U. S. 3, 27 L, Ed. 835), where the matter was fully discussed and decided that the Federal Government was not granted the power by virtue of this amendment to enact laws to punish offenses of one individual against another or to make general laws within the States to prevent specific crimes by individuals. On page 839 of the L. Ed. after quoting the provision of the fourteenth amendment, referred to. it is said:

"It is State action of a particular kind that is prohibited. Individual invasion of individual rights is not the subject matter of the amendment. It has a deeper and broader scope. It nullifies and makes void all State legislation, and State action of every kind, which impairs the privileges and immunities of citizens of the United States, or which injures them in life, liberty, or property without due process of law, or which denies to any of them the equal protection of the laws. It not only does this, but, in order that the national will, thus declared, may not be a mere brutum fulmen, the last section of the amendment invests Congress with power to enforce it by appropriate legislation. To enforce what? To enforce the prohibition. To adopt appropriate legislation for correcting the effects of such prohibited State laws and State acts, and thus to render them effectually null and void and innocuous. This is the legislative power conferred upon Congress, and this is the whole of it. It does not invest Congress with power to legislate upon subjects which are within the domain of State legislation; but to provide modes of relief against State legislation or State action, of the kind referred to. It does not authorize Congress to create a code of municipal law for the regulation of private rights; but to provide modes of redress against the operation of State laws, and the action of State officers, executive or judicial, when these are subversive of the fundamental rights specied in the amendment. Positive rights and privileges are undoubtedly secured by the fourteenth amendment; but they are secured by way of prohibition against State laws and State proceedings affecting those rights and privileges, and by power given to Congress to legislate for the purpose of carrying such prohibition into effect; and such legislation must, necessarily, be predicated upon such supposed State laws or State proceedings, and be directed to the correction of their operation and effect. A quite full discussion of this aspect of the amendment may be found in *U. S.* v. *Cruikshank* (92 U. S. 542), *Va.* v. *Rives* (100 U. S. 339)."

Further on in the opinion on page 840, the Court said:

"And so in the present case, until some State law has been passed or some State action through its officers or agents has been taken, adverse to the right of citizens sought to be protected by the fourteenth amendment, no legislation of the United States under said amendment, nor any proceeding under such legislation, can be called into activity; for the prohibitions of the amendment are against State laws and acts done under State authority. Of course, legislation may and should be provided in advance to meet the exigency when it arises; but it should be adapted to the mischief and wrong which the amendment was intended to provide against; and that is, State laws, or State action of some kind, adverse to the rights of the citizen secured by the amendment. Such legislation cannot properly cover the

whole domain of rights appertaining to life, liberty, and property, defining them and providing for their vindication. That would be to establish a code of municipal law regulative of all private rights between man and man in society. It would be to make Congress take the place of the State legislatures and to supersede them. It is absurd to affirm that, because the rights of life, liberty, and property, which include all civil rights that men have, are, by the amendment, sought to be protected against invasion on the part of the State without due process of law, Congress may, therefore, provide due process of law for their vindication in every case; and that, because the denial by a State to any persons, of the equal protection of the laws, is prohibited by the amendment, therefore Congress may establish laws for their equal protection. In fine, the legislation which Congress is authorized to adopt in this behalf is not general legislation upon the rights of the citizen, but corrective legislation, that is, such as may be necessary and proper for counteracting such laws as the States may adopt or enforce, and which, by the amendment, they are prohibited from making or enforcing, or such acts and proceedings as the States may commit or take, and which, by the amendment, they are prohibited from committing or taking."

On the same page in the second column, the court further said:

"If this legislation is appropriate for enforcing the prohibitions of the amendment, it is difficult to see where it is to stop. Why may not Congress with equal show of authority enact a code of laws for the enforcement and vindication of all rights of life, liberty, and property? If it is supposable that the States may deprive persons of life, liberty, and property without due process of law, and the amendment itself does suppose this, why should not Congress proceed at once to prescribe due process of law for the protection of every one of these fundamental rights, in every possible case, as well as to prescribe equal privileges in inns, public conveyances, and theaters? The truth is, that the implication of a power to legislate in this manner is based upon the assumption that if the States are forbidden to legislate or act in a particular way on a particular subject, and power is conferred upon Congress to enforce the prohibition, this gives Congress power to legislate generally upon that subject, and not merely power to provide modes of redress against such State legislation or action. The assumption is certainly unsound. It is repugnant to the tenth amendment of the constitution, which declares that powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people."

On the same page in the second column the court further said:

"The law is clearly corrective in its character, intended to counteract and furnish redress against State laws and proceedings and customs having the force of law, which sanction the wrongful acts specified."

On page 841, in the second column the court further said:

"In this connection it is proper to state that civil rights, such as are guaranteed by the Constitution against State aggression, cannot be impaired by the wrongful acts of individuals, unsupported by State authority in the shape of laws, customs, or judicial or executive proceedings. The wrongful act of an individual, unsupported by any such authority, is simply a private wrong, or a crime of that individual; an invasion of the rights of the injured party, it is true, whether they affect his person, his property or his reputation; but if not sanctioned in some way by the State, or not done under State authority, his rights remain in full force, and may presumably be vindicated by resort to the laws of the State for redress. An individual cannot deprive a man of his right to vote, to hold property, to buy and to sell, to sue in the courts or to be a witness or a juror; he may, by force or fraud, interfere with the enjoyment of the right in a particular case; he may commit an assault against the person, or commit murder, or use ruffian violence at the polls, or slander the good name of a fellow citizen; but, unless protected in these wrongful acts by some shield of State law or State authority, he cannot destroy or injure the right; he will only render himself amenable to satisfaction or punishment; and amenable therefor to the laws of the State where the wrongful acts are committed. Hence, in all those cases where the Constitution seeks to protect the rights of the citizen against discriminative and unjust laws of the State by prohibiting such laws, it is not individual offenses, but abrogation and denial of rights, which it denounces, and for which it clothes the Congress with power to provide a remedy. This abrogation and denial of rights, for which the States alone were or could be responsible, was the great seminal and fundamental wrong which was intended to be remedied. And the remedy to be provided must necessarily be predicated upon that wrong. It must assume that in the cases provided for, the evil or

wrong actually committed rests upon some State law or State authority for its excuse and perpetration."

A careful study of this case should convince any reasonable person that the powers which Congress may exercise is not the power to make enactments prohibiting individual conduct but the power to make the prohibition on the State is effective; and this has been done by giving the right to appeal from the State court, taking such decisions to the Supreme Court of the United States where that Court may review the State's decision and if it finds that the State law conflicts with the fourteenth amendment then that law may be stricken down and declared of no effect. In other words, State action can be set aside by the Federal courts on appeal from the State courts. The Federal law gives the right of appeal to any person whose rights are invaded by a State law or by officers acting under State law and clothed with the power to act for the State. Federal Government does not punish individuals for crimes committed in the State nor does it punish or prohibit private persons for violating civil rights or other rights of another private person.

In the case of *U. S.* v. *Harris* (106 U. S. 629; 27 L. Ed. 290), the Court had occasion to deal with the subject and held that section 5519 of the Revised Statutes making it a criminal offense for two or more persons in a State or Territory to conspire to deprive any person of the actual protection of the laws of the State is unconstitutional. That the statute therein involved was broader than is warranted by the Constitution. On page 293 of the Law Edition the Court said:

"It is, however, strenuously insisted that the legislation under consideration finds its warrant in the first and fifth sections of the fourteenth amendment. The first section declares 'All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.'

"The fifth section declares 'The Congress shall have power to enforce by appropriate legislation the provisions of this amendment.'

"It is perfectly clear, from the language of the first section, that its purpose also was to place a restraint upon the action of the States. In the *Slaughter-House Cases* (16 Wall. 36 (83 U. S. XXI., 394)), it was held by the majority of the Courst, speaking through Mr. Justice Miller, that the object of the second clause of the first section of the fourteenth amendment was to protect, from the hostile legislation of the States, the privileges and immunities of citizens of the United States, and this was conceded by Mr. Justice Field, who expressed the views of the dissenting Justices in that case. In the same case, the Court, referring to the fourteenth amendment, said that 'If the States do not conform their laws to its requirements, then, by the fifth section of the article of amendment, Congress was authorized to enforce it by suitable legislation.'

"The purpose and effect of the two sections of the fourteenth amendment above-quoted were clearly defined by Mr. Justice Bradley in the case of *U. S.* v. *Cruikshank* (1 Woods 316), as follows: 'It is a guaranty of protection against the acts of the State government itself. It is a guaranty against the exertion of arbitrary and tyrannical power on the part of the government and legislature of the State; not a guaranty against the commission of individual offenses; and the power of Congress, whether express or implied, to legislate for the enforcement of such a guaranty does not extend to the passage of laws for the suppression of crime within the States. The enforcement of the guaranty does not require nor authorize Congress to perform "The duty that the guaranty itself supposes it to be the duty of the State to perform and which it requires the State to perform.'"

"When the case of *U. S.* v. *Cruikshank* came to this Court, the same view was taken here. The Chief Justice, delivering the opinion of the Court in that case, said: 'The fourteenth amendment prohibits a State from depriving any person of life, liberty, or property without due process of law, or from denying to any person the equal protection of the laws; but this provision does not add anything to the rights of one citizen as against another. It simply furnishes an additional guaranty against any encroachment by the States upon the fundamental rights which belong to every citizen as a member of society. The duty of protecting all its citizens in the enjoyment of an equality of rights was originally assumed by the States, and it remains there. The only obligation resting upon the United States is to see that the Sates do not deny the right. This the

amendment guarantees and no more. The power of the National Government is limited to this guaranty' (92 U. S. 542 (XXIII, 588))."

In the case of *U. S.* v. *Butler* (297 U. S. 188; 80 L. Ed. 477–499, syllabus 6), the Court announced:

"The Federal Constitution is the supreme law of the land, ordained and established by the people, and all legislation must conform to the principles it lays down."

In the seventh syllabus, it announced:

"The function of the courts when an act of Congress is appropriately challenged as not conforming to the constitutional mandate is merely to ascertain and declare whether the legislation is in accordance with or in contravention of the provisions of the Constitution, and not to approve or condemn its policy."

It was held in syllabus 8:

"The Federal Government is one of delegated powers; and has only such as are expressly conferred upon it and such as are reasonably to be implied from those granted."

It was held in the ninth syllabus:

"Power to provide for the general welfare independently of the taxing power is not conferred by the provision of article I, section 8, clause 1, of the Federal Constitution, empowering Congress 'To lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States,' but the only thing granted is the power to tax for the purpose of providing funds for payment of the Nation's debts and making provision for the general welfare."

In the case of *U. S.* v. *A. L. A. Schecter Poultry Corp.* (295, 79 L. Ed. 1570, 97 A. L. R. 947) it was held by the Supreme Court of the United States that extraordinary conditions do not create or enlarge constitutional power and do not justify governmental action outside the sphere of constitutional authority. It was held that the powers of the National Government are limited to those granted by the Constitution. In syllabus 3 of this case, the Court said:

"Legislative power is unconstitutionally delegated by the provisions of section 3 of the National Industrial Recovery Act of June 16, 1933, authorizing the making of codes for the government of trades and industries by or with the approval of the President of the United States, without setting up any standards aside from the statement of the general aim of rehabilitation, correction, and development of trades and industries."

In *Greenwood Co.* v. *Duke Power Co.* (81 Fed. (2d) 986), it was held that officers acting under authority of Congress do not encroach on powers reserved to States.

In *Panama Refining Co.* v. *A. D. Ryan, and others* (79 L. Ed. 446; 293 U. S. 388–448), it was held in the fourth syllabus:

"Legislative power is unconstitutionally delegated by the provisions of section 9 (c) of title I, of the National Industrial Recovery Act of June 16, 1933 (48 Stat. at L. 195, 200, 15 U. S. C., title 1, sec. 709 (c)), authorizing the President to prohibit under penalty of fine or imprisonment or both, the transportation in interstate and foreign commerce of petroleum and the products thereof, produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder by the duly authorized agency of a State, but containing no definition of the circumstances and conditions in which the transportation is to be allowed or prohibited."

In the fifth syllabus, it was held:

"A delegation of legislative power to an administrative officer is not brought within the permissible limits of such delegation by prescribing the public good as the standard for the administrative officer's action."

In the same case, in syllabus 9, it was held:

An Executive order must, in order to satisfy the constitutional requirement of due process, show the existence of the particular circumstances and conditions under which the making of such an order has been authorized by Congress."

In Sixteen Corpus Juris Secundum, 130, 269 (b), it is stated:

"As shown in greater detail, infra, sections 438, 505, 568, the provisions of the fourteenth amendment prohibiting the making or enforcing of laws which abridge privileges or immunities, the deprivation of life, liberty, or property without due process of law, and the denial of the equal protection of the law refer to State action or legislation exclusively, including in general the instrumentalities and agencies employed in the administration of State government, and do not refer

to the action of private individuals, nor protect individual rights from individual invasions."

It will be seen from a consideration of these authorities that it is not within the power of Congress to enact policies, legislation, or to regulate the conduct of persons within the States. Of course, in Territories of the United States not formed into States, the Federal Government has all the power that a State has within the State limitations. When Congress admits certain Territory to statehood, the new State has all the powers that other States have and that the Original Thirteen States had when the Constitution was ratified.

I submit that the Senate bill referred to is so indefinite in its terms that it would deny due process of law to citizens and governmental subdivisions because the act does not define with sufficient definiteness what constitutes a crime under the act. In order for an act of Congress or any other law to be valid, the terms of the law must be capable of being understood as to what acts are prohibited or what rights are granted by the act, so that a person would not have to guess what the law meant. In other words, the law must be capable of being understood when the rules of statutory construction are brought into play.

In *United States* v. *L. Cohen Grocery Company* (255 U. S. 81; 65 L. ed. 516) it was held that Congress, in attempting as it did in the Lever Act of August 10, 1917, "To punish criminally any person who willfully makes 'any unjust or unreasonable rate or charge in handling or dealing in or with any necessaries' * * *."

On page 520 of the Sixty-fifth Law Edition Report, the Court said:

"Therefore, because the law is vague, indefinite, and uncertain, and because it fixes no immutable standard of guilt but leaves such standard to the variant views of the different courts and juries which may be called on to enforce it, and because it does not inform the defendant of the nature and cause of the accusation against him, I think it is constitutionally invalid, and that the demurrer offered by the defendant ought to be sustained."

This case cites a number of other authorities upon the proposition of the necessity of statutes being definite and capable of being understood. (See *Kennington* v. *Palmer* (255 U. S. 100; 65 L. ed. 528); *Connaly* v. *General Construction Company* (70 L. ed. 322; 269 U. S. 385), with the case note appended to the Law Edition Report of the case upon the subject of vagueness and indefiniteness of a statute and rendering them unconstitutional.) When this authority and the case-note authority are applied to the bill involved here, it is clear that no definite acts are named or set forth with certainty as to make it clear and certain.

I am therefore of the opinion that the terms of the act being indefinite and uncertain, the act, if passed, would be void.

I submit in the next place that the act is unconstitutional in that it undertakes to create rights of private persons against the State and its governmental institutions, and to give private citizens the right to bring suit against such governmental subdivisions and the State which violates the eleventh amendment, which provides:

"The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign state."

Under this section a State cannot be sued without its consent (*Stone* v. *Interstate Natural Gas Company*, 103 Fed. (2d) 544, affirmed in 308 U. S. 522; 84 L. Ed. 442; 60 S. Ct. 292). There are numerous authorities that could be cited to sustain this proposition, but I deem it unnecessary to go further because it has often been held that a State, even where it consented to be sued, could withdraw that consent even after the obligation had been incurred.

I submit that the proposed statute is unconstitutional because it undertakes to authorize the Attorney General of the United States to bring suit for the benefit of private persons for personal injuries or the violation of personal rights and there is no constitutional authority for the Attorney General, as such, to bring a suit against the State for violation of personal rights or for the redress of personal injuries, and Congress has no power to authorize the State or its subdivisions to be sued in such a case without the consent of the State expressly given, and Congress has no right or power to coerce or penalize a State or its subdivisions for failure to enact any law committed to the State under the division of powers between the State and the Nation. Congress has no power by an act of Congress to create a right of action against the State or any of its subdivisions. The same being prohibited by the eleventh amendment.

Furthermore, I submit that the proposed bill is unjust, unfair, and if permitted to become a law by Congress and the Federal court it would wholly disrupt the constitutional system of government. It would authorize the Congress to absorb all the powers belonging to the States and reserved to them by the tenth amendment. In closing this brief, I desire to call attention to the splendid speech of Senator George appearing in volume 83, part 1, page 964, made in 1938, against a similar bill then pending in Congress. Judge George had long judicial experience in the State of Georgia; being for a time a member of the State supreme court and being a learned jurist whose opinion has great weight. I also desire to call attention to a speech made by Judge John R. Tyson in 1922 on what is known as the Dyer antilynching bill. Judge Tyson was also a jurist of great ability and had served in courts of original jurisdiction and on the Alabama Supreme Court, which speech appears in volume 62, part 2, page 1351, Congressional Record, and delivered January 18, 1922, which is a valuable contribution to the discussion of the division of powers between the States and the Nation. I also desire to call attention to the speech of Senator Pepper, of Florida, volume 83, part 1, page 1033, of the Congressional Record, delivered January 25, 1938, in opposition to a bill similar in most respects to the present bill. I desire to call attention to the speech of Senator Shephard in volume 83, part 1, Congressional Record, page 1168, on a similar bill then pending in the Congress, and also the speech of Senator Kyne made in 1938, same volume of the Congressional Record, page 1197. I also desire to call attention to a speech delivered by Congressman Ross Collins, January 12, 1922, volume 62, Congressional Record, part 2, page 1134, et seq. These fine discussions of the question involved in the present bill so far as principles are concerned and bills on which they were made being similar to and for the same purpose that the present one is sought to be enacted by its sponsors.

There is no greater need for vigilance and learning on the part of our Senators and Representatives than when a law is proposed that would affect the division of powers between the State and Federal Governments and the wisdom of adhering to the splendid system of government which our Constitution gives us, and the right of citizens thus secured should be maintained unimpaired and neither the State government nor the National Government should invade the field of legislation properly belonging to the other government. This is especially true as to Senators who have not only great legislative power but whose counsel must be had in making treaties with other governments and who participate with the executive department in selecting the officers in the executive and judicial departments of our Government, which great powers so necessary to the security and safety of our Government should be understood and respected and maintained by those representing us in the highest deliberative body in the world.

Respectfully submitted.

GREEK L. RICE,
Attorney General.
GEO. H. ETHRIDGE,
Assistant Attorney General.

ANTILYNCHING

Existing bills

[Briefed and compared by sections]

S. 42—Introduced by Senator Hawkes, Jan. 6, 1947	S. 1352—Introduced by Senators Wagner and Morse, May 27, 1947	S. 1465—Introduced by Senator Knowland, June 18, 1947
1. Act enacted as part of congressional power to enforce ourteenth amendment. To assure by States under the amendment equal protection and due process to all persons charged with or convicted of any offense.	1. Findings and policy: (*a*) Duty of States to refrain from depriving persons of life, etc., without due process and from denying persons equal protection of laws. Duty is breached when a State's inaction is a withholding of protection. When a State permits a lynching (malfeasance or misfeasance of its officials) and condones it by participation, facilitation, or failure to punish lynchers, it denies due process and equal protection. Lynching besides a punishment is also a weapon to terrorize a minority and thus deny rights under the Constitution. Condonance by the State gives the color of State's authority to the acts of the lynchers. (*b*) State persons denied due process and equal protection because of race, color, etc., are denied their human rights and freedoms. (*c*) Law of nations requires a person be free from violence because of race.	1. Purpose to enforce the fourteenth amendment to assure under it protection to United States citizens and equal protection of the laws and due process to all within the jurisdiction of the several States. A State has denied lynchees equal protection and due process when it fails, neglects, etc., to protect against lynching or seizure followed by lynching.
NOTE.—No similar provision.	2. This act needed to do the following: (a) Enforce article XIV, sec. 1 of the Constitution amend. (*b*) Observe human rights and freedoms without regard to race, etc., in accordance with United States treaties under arts. 55 and 56 of the United Nations Charter. (*c*) Define and punish offenses against the law of nations.	NOTE.—No similar provision.
NOTE.—No similar provision.	3. Right to be free from lynching is a right of citizens of the United States and is in addition to their States' rights.	NOTE.—No similar provision.
2. Defines "mob" and "lynching": 3 or more. NOTE.—Similar to others but lacking reference to race, color, etc.	4. Lynch mob defined as assemblage of 2 or more (*a*) to commit violence upon persons or property because of race, etc.; or (*b*) exercise by violence punishment over any United States citizen in custody or suspected (charged or convicted) of any crime with the purpose of preventing apprehension (trial or punishment) by law of such citizen, or imposing a punishment not authorized by law. Violence by a lynch mob shall be lynching.	2. "Mob" defined as assemblage of 3 or more to exercise without law by physical violence any punishment over those in custody of peace officers or those charged (suspected or convicted) with any crime for the purpose of preventing their apprehension (trial or punishment). "Lynching" defined as such action above which constitutes injury or death. Lynching shall not include violence between gangsters or that arising out of labor disputes.
NOTE.—No similar provision.	5. Lynchers, instigators, and inciters, etc., punished by fine not over $10,000 and/or 20 years in jail.	NOTE.—No similar provision.

3. Liability of those charged with the duty or possessing the authority of protecting lynchees which they neglect or refuse to make diligent efforts to protect. Liability of custodians of lynchees. Liability of those possessing the authority to apprehend, keep in custody or prosecute members of lynch mob. Penalty: Not exceeding 5 years or $5,000 or both.

4. Provision for the Attorney General to investigate violations of the act.

5. (a) Civil liability of the State governmental subdivision. Negligence in its duty. To each injured or lynched damages between $2,000 and $10,000. Limited to 1 judgment against 1 subdivision.

(b) Jurisdiction and venue. United States district court for the judicial district of which the defendant governmental subdivision is a part. Optional for the Attorney General to sue in the name of the United States for the real party in interest or by claimants counsel. No prepayment of costs. Judgment enforced by any process available under the State law for the enforcement of any other monetary judgment. Officers refusing to comply with court order to enforce judgment are guilty of contempt. Cause of action survives lynchee's death to next of kin. (Laws of State intestate distribution.) Judgment exempt from creditors' claims.

(c) Judge before whom suit is instituted may order it tried in any district.

(d) Prima facie evidence of liability when (1) local officers after timely notice fail to protect or (2) apprehension of danger of mob violence is general or any circumstance from which the trier of fact might reasonably conclude that the State subdivision had failed to use reasonable diligence to protect.

NOTE.—No similar provision.

6. Severability clause.

NOTE.—No similar provision.

6. State officials who are charged with the duty or possess the authority to prevent lynching (and neglect, etc.) and shall have custody of lynchees and willfully neglect to protect) and neglects to apprehend lynchers shall be fined not over $5,000 and/or imprisoned not over 5 years.

7. Attorney General shall investigate violations of this act on information under oath.

8. (1) Governmental subdivisions of States are responsible for lynchings. Responsible if seizure took place within their territory. Civil liability is between $2,000 and $10,000 to lynchees or next of kin. Affirmative defense when State officers prove by a preponderance of evidence they used all diligence to protect lynchees. One judgment will bar proceedings against other subdivisions.

(2) Civil suits under this section instituted in the United States district court for the judicial district of which defendant governmental subdivision is a part. Attorney General may sue in name of United States for real party in interest or claimant by private counsel. In any event without prepayment of costs. Judgment enforced by any process available under the State law for such enforcement against a governmental subdivision. Any official refusing to comply with court order enforcing judgment is guilty of contempt. Cause of action survives to next of kin. (Intestate distribution). Judgment free from claims of creditors.

(3) Judge of United States district court before whom suit instituted may designate any place in such district for trial. Proviso: Not triable within territory limits of the defendant governmental subdivision.

NOTE.—No similar provision.

9. Places transportation of lynchees under the Federal Kidnaping Act.

10. Severability clause.

11. Short title "Federal Antilynching Act."

3. Liability of those charged with the duty or possessing the authority to protect lynchees and neglect to do so; custodians of lynchees and those charged with the duty of apprehending lynchers are liable for neglect. Penalty: Fine not over $5,000 and/or 5 years imprisonment.

4. Attorney General shall investigate violations of this act on information under oath.

5. (1) through (3) same as sec. 8 (1) through (3) of S. 1352.

NOTE.—No similar provision.

6. Places transportation of lynchees under the Federal Kidnaping Act.

7. Severability clause.

NOTE.—No similar provision.

THE LIBRARY OF CONGRESS,
January 14, 1948.

Memorandum.
To: Senate Judiciary Committee.
From: Federal Law Section.
With reference to: Section 5 of S. 42, 80th Congress, and section 8 of S. 1352, 80th Congress: Can Congress, in the exercise of its Constitutional powers, enact a law creating civil liability on the part of governmental subdivisions of a State for acts of omission, as well as acts of commission, on the part of police authorities which result in lynchings?

Since January 1900 nearly 200 so-called antilynching bills have been introduced in Congress. Most of these bills follow a general pattern in defining lynching and providing for severe penalties for aiding or permitting that act of violence. Many, including S. 42 and 1352 of the 80th Congress, provide further that a governmental subdivision of a State whose officers have been lacking in diligence shall be liable to the mob victim or his next of kin and suits for this purpose shall be brought in a United States district court by the Attorney General or may be brought by counsel retained by the party in interest. That the State itself may give such a remedy against the political subdivision has been decided by the Supreme Court and numerous State courts. In upholding the validity of an Illinois act requiring municipalities to indemnify the owners of property for damages occasioned by mobs and riots, Mr. Justice Lurton stated, in *City of Chicago* v. *Sturges* (1911) 222 U. S. 313, 323:

"The policy of imposing liability upon a civil subdivision of government exercising delegated police power is familiar to every student of the common law. We find it recognized in the beginning of the police system of Anglo-Saxon people. Thus, 'The Hundred,' a very early form of civil subdivision, was held answerable for robberies committed within the division. By a series of statutes, beginning possibly in 1285, in the statutes of Winchester, 13 Edw. I, c. 1, coming on down to the 27th Elizabeth, c. 13, the Riot Act of George I (1 Geo. I, St. 2) and Act of 8 George II, c. 16, we may find a continuous recognition of the principle that a civil subdivision entrusted with the duty of protecting property in its midst and with police power to discharge the function, may be made answerable not only for negligence affirmatively shown, but absolutely as not having afforded a protection adequate to the obligation. Statutes of a similar character have been enacted by several of the States and held valid exertions of the police power. *Darlington* v. *Mayor &c. of New York*, 31 N. Y. 164; *Fauvia* v. *New Orleans*, 20 La. Ann. 410; *County of Allegheny* v. *Gibson &c.*, 90 Pa. St. 397. The imposition of absolute liability upon the community when property is destroyed through the violence of a mob is not, therefore, an unusual police regulation. Neither is it arbitrary, as not resting upon reasonable grounds of policy. Such a regulation has a tendency to deter the lawless, since the sufferer must be compensated by a tax burden which will fall upon all property, including that of the evil doers as members of the community. It is likewise calculated to stimulate the exertions of the indifferent and the law-abiding to avoid the falling of a burden which they must share with the lawless. In that it directly operates on and affects public opinion, it tends strongly to the upholding of the empire of the law."

The proposed bills represent a renewed effort to make use of the enabling clause of the Fourteenth Amendment to prevent lynchings resulting from action or inaction on the part of local authorities. See The Federal Antilynching Bill, Col. L. R. 38: 199, 206.

Before entering the discussion of the possible application of the powers granted in the Fourteenth Amendment it would be well, perhaps, to dispose of possible arguments that the Eleventh Amendment precludes such civil liability on the part of political subdivisions of a State. The Eleventh Amendment specifically provides that the judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against *one of the United States* by citizens of another State, or by citizens or subjects of any foreign states. This Amendment was the direct result of the decision of the Supreme Court in *Chisholm* v. *Georgia* (1793) 2 Dall. 419 which held that a State was liable to be sued by a citizen of another State or a foreign state. It is part of our history, that, at the adoption of the Constitution, all States were greatly indebted; and the apprehension that actions on these debts might be prosecuted in the Federal courts formed a very serious objection to ratification of that instrument. Suits were instituted, and the Court maintained its jurisdiction. The alarm was general and to quiet the apprehensions that were so extensively entertained, this

Amendment was proposed and adopted. *Cohens* v. *Virginia* (1821) 6 Wheat. 264, 406.

The very object and purpose of the Eleventh Amendment were to prevent the indignity of subjecting a sovereign State to the coercive process of judicial tribunals at the instance of private parties. *Ex parte Ayers* (1887) 123 U. S. 443, 505. Consequently a suit against a governor in his official capacity, to recover moneys in the State treasury or a suit to compel performance of a State contract by mandamus against its officers requiring application of funds in the State treasury and the collection of a specific tax are considered suits against the State. See *Governor of Georgia* v. *Madrazo* (1828) 1 Pet. 110; *Kentucky* v. *Dennison* (1861) 24 How. 66, 98; *Louisiana* v. *Jumel* (1883) 107 U. S. 711. The right, therefore, of an individual to sue a State, in either a Federal or a State court, cannot be derived from the Constitution or the laws of the United States. It can only come from the consent of the State. *Palmer* v. *Ohio* (1918) 248 U. S. 32, 34 citing authorities. However, this Amendment does not necessarily prevent suits by individuals against defendants who claim to act as officers of a State or to recover money or property unlawfully taken from them in behalf of a State. *Re Tyler* (1893) 149 U. S. 164, 190; *Scott* v. *Donald* (1897) 165 U. S. 58, 67; 165 U. S. 107. Nor can the immunity afforded by the Eleventh Amendment be availed of by public agents when sued for their own torts where, under color of their office, they have injured one of the State's citizens. In such instances the wrongdoer may be treated as a principal and therefore found individually liable. See *Hopkins* v. *Clemson Agricultural College* (1911) 221 U. S. 636, 643; *Belknap* v. *Schild* (1896) 161 U. S. 10, 18; *Old Colony Trust Co.* v. *Seattle* (1926) 271 U. S. 426; and *Worcester County Trust Co.* v. *Riley* (1937) 302 U. S. 292. See also *Refoule* v. *Ellis* (1947) 74 F. Supp. 336, 338.

In the public law of the United States, then, a State is sovereign or at least quasi-sovereign. Not so, a local governmental unit, though the State may have invested it with governmental power. Such a governmental unit may be brought into court against its will without violating the Eleventh Amendment. See the dissent of Mr. Justice Cardozo in *Ashton* v. *Cameron County District* (1936) 298 U. S. 513, 543 citing *Lincoln County* v. *Luning* (1890) 133 U. S. 529 and *Hopkins* v. *Clemenson College*, supra. In *Lincoln County* v. *Luning*, Mr. Justice Brewer had stated:

"With regard to the first objection, it may be observed that the records of this court for the last thirty years are full of suits against counties, and it would seem as though by general consent the jurisdiction of the Federal courts in such suits had become established. But irrespective of this general acquiescence, the jurisdiction of the Circuit courts is beyond question. The Eleventh Amendment limits the jurisdiction only as to suits against a State. It was said by Chief Justice Marshall, in *Osborn* v. *The Bank of the United States*, 9 Wheat. 738, 857, that 'the Eleventh Amendment, which restrains the jurisdiction granted by the Constitution over suits against States, is of necessity limited to those suits in which the State is a party on the record.'

"While that statement was held by this court in the case of *In re Ayers*, 123 U. S. 443, to be too narrow, yet by that decision the jurisdiction was limited only in respect to those cases in which the State is a real, if not a nominal defendant; and while the county is territorially a part of the State, yet politically it is also a corporation created by and with such powers as are given to it by the State. In this respect it is a part of the State only in that remote sense in which any city, town, or other municipal corporation may be said to be a part of the State. *Metropolitan Railroad Co.* v. *District of Columbia*, 132 U. S. 1."

Thus sovereignty of the State is protected. However the separate political communities under a State appear to have no more sovereignty than the District of Columbia. In other words the subordinate legislative or municipal powers lodged in these political subdivisions do not make them sovereign. In the case of the District of Columbia, sovereignty is lodged with the Government of the United States, not in the Corporation of the District of Columbia. See *Metropolitan Railroad Co.* v. *D. C.* (1889) 132 U. S. 1, 9; *Roach* v. *Van Riswich*, 1 MacArth, & M. 171, 178; *Grether* v. *Wright* (1896) 75 F. 742, 756; and *Stoutenburgh* v. *Hennick* (1889) 129 U. S. 141, 147. The protection of the Eleventh Amendment, then, is limited to suits in which the State is a party on the record or at least the real defendant and does not prohibit suits against counties or other political subdivisions of the State. See *Cooper* v. *Westchester County* (1941) 42 F. Supp. 1; *Pettibone* v. *Cook County, Minn.* (1941) 120 F. 2d 850; *Dunnuck* v. *Kansas State Highway Commission* (1938) 21 F. Supp. 882; and *Camden Interstate R. Co.* v. *Catlettsburg* (1904) 129 F. 421.

Willoughby states that the constitutionality of the provision imposing upon a county in which a lynching occurs a penalty recoverable in a suit by the United States against the county is not free from constitutional doubt. The question, he says, is an open one in the sense that there have been no adjudications of it by the Supreme Court, but the suit to recover the penalty or damages would be a suit against the State unless it could be held that the county, as regards the general enforcement of law, is to be viewed as acting on its own local behalf and not as an agency of the State. Willoughby on the Constitution, Vol. 3, Sec. 1272, p. 1937. In view of the foregoing, it appears that general doubt, which he raised, can be resolved in favor of the existence of Federal power to enact legislation providing for such suits, provided, there is also found in the Fourteenth Amendment the power to protect the rights violated by a lynching.

Lynching or lynch law is defined by Anderson's Dictionary of Law, as the action of private individuals, organized bodies of men, or disorderly mobs, who, without legal authority, punish, by hanging or otherwise, real or suspected criminals, without trial according to the forms of law. American lexicographers refer the origin of the term to the practice of a Virginia farmer named Lynch, who during the War of Independence was presiding justice of the county court of Pittsylvania, Virginia. The court in that State for the trial of felonies sat at Williamsburg, 200 miles distant. Horse thieves who had established posts from the north, through Virginia, into North Carolina, were frequently arrested and remanded to Williamsburg for trial. Not only was the attendance of witnesses at that distance rendered uncertain, but when they did appear they were sure to be confronted by false witnesss for the outlaws. Moreover, the difficulty of conveying the accused to Williamsburg was increased, and the sitting of the court made uncertain, by the presence of the British under Cornwallis. Accordingly the justices of the county court of Pittsylvania assembled, and Judge Lynch proposed that since, for Pittsylvania, the court at Williamsburg had practically ceased to exist, and, in consequence, heinous crimes went unpunished, the court over which he presided should try all felonies committed in the county; that is to say, the place of trial was to be changed by mere resolution. The plan was adopted, with good results. The thieves were disbanded; many being hanged, which was the lawful penalty. The change of forum was against the words of the law, but justified, Lynch and others held, by the circumstances. See Words and Phrases, permanent edition, citing *State* v. *Aler*, 39 W. Va. 549.

Existing Federal jurisdiction as to lynching and mob violence is based largely on U. S. C. 18:51 and 52 which are fragments of the Civil Rights Acts of 1866 and 1871 and the Enforcement Act of 1870 (See 14 Stat. 27; 16 Stat. 140, 433; 17 Stat. 13) and were passed primarily to make effective the guarantees of the Thirteenth, Fourteenth, and Fifteenth Amendments. Coleman, Freedom From Fear on the Home Front, Ia. L. Rev. 29:415, 417. These provisions read:

"SEC. 51. (Criminal Code, section 19.) Conspiracy to injure persons in exercise of civil rights.

"If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same, or if two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured, they shall be fined not more than $5,000 and imprisoned not more than ten years, and shall, moreover, be thereafter ineligible to any office, or place of honor, profit, or trust created by the Constitution or laws of the United States. (Mar. 4, 1909, ch. 321, sec. 19, 35 Stat. 1092.)"

"SEC. 52. (Criminal Code, section 20.) Depriving citizens of civil rights under color of State laws.

"Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects, or causes to be subjected, any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution and laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000, or imprisoned not more than one year, or both. (Mar. 4, 1909, ch. 321, sec. 20, 35 Stat. 1092.)"

The broad provisions of the Fourteenth Amendment sought to be invoked reads:

"SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge

the privileges or immunities of citizens of the United States; or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

"SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

There are indications that the authors of this Amendment intended that Congress should have broad powers to provide against the denial of rights of citizens of the United States. See Flack, The Adoption of the Fourteenth Amendment, It will be recalled that the background period of this Amendment was a stormy era of our history; that after the Civil War a bitter controversy arose in which President Johnson sided with the Southern States in the contention that they were entitled, as a matter of constitutional right, to unconditional recognition and readmission to the Union. Encouraged by the President's support, these States were led, in some instances, to assume an attitude of definance and to enact harsh laws directed against the newly freed negroes. The prevailing sentiment in the Northern States, on the other hand, was that all the fruits of the war would be wasted unless guarantees were secured against abitrary and oppressive State action. See Guthrie, Lectures on the Fourteenth Amendment. * * * In the atmosphere of this controversy the proposed Amendment was submitted to the States.

Noble language enunciating broad general principles has often been used by the Supreme Court to describe the powers granted but the point actually decided has in many instances been restrictive. An example of this noble language followed by narrow construction is the case of *U. S.* v. *Cruikshank* (1876) 92 U. S. 542, 555 where Mr. Chief Justice Waite speaking for the Court said, "* * * The quality of rights of citizens is a principle of republicanism. Every republican government is in duty bound to protect all its citizens in the enjoyment of this principle, if within its power. * * *" After making this assertion he went on to say that the only obligation resting upon the United States was to see that States do not deny the right. See also the speech of Representative Keating, Cong. Rec. (daily) Nov. 20, 1947, p. A4591.

Further illustrations of language are:

"Rights and immunities created by or dependent upon the Constitution of the United States can be protected by Congress. The form and manner of the protection may be such as Congress, in the legitimate exercise of its legislative discretion, shall provide. These may be varied to meet the necessities of the particular right to be protected." *U. S.* v. *Reese* (1876) 92 U. S. 214, 217.

"* * * [the Fourteenth Amendment] does not authorize Congress to create a code of municipal law for the regulation of private rights; but to provide modes of redress against the operation of State laws, and the action of State officers, executive or judicial, when these are subversive of the fundamental rights specified in the Amendment." *Civil Rights Cases* (1883) 109 U. S. 8, 11.

"And so * * * until * * * some State action through its officers or agents has been taken, adverse to the rights of citizens sought to be protected by the Fourteenth Amendment, no legislation of the United States under said amendment, nor any proceeding under such legislation, can be called into activity: for the prohibitions of the amendments are against State laws and acts done under State authority" (p. 13).

"* * * Many wrongs may be obnoxious to the prohibitions of the Fourteenth Amendment. * * * Such, for example, would be * * * allowing persons who have committed certain crimes * * * to be seized and hung by the posse comitatus without regular trial * * *" (p. 23).

"The Fourteenth Amendment * * * undoubtedly intended not only that there should be no arbitrary deprivation of life or liberty, or arbitrary spoliation of property, but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights * * *." *Barbier* v. *Connolly* (1885) 113 U. S. 27, 31.

The purpose of the Fourteenth Amendment "* * * was to secure equal rights to all persons, and, to insure to all persons the enjoyment of such rights, [and] power was given to Congress to enforce its provisions by appropriate legislation. Such legislation must act upon persons, not upon the abstract thing denominated a State, but upon persons who are agents of the State in the denial of the rights which were intended to be secured. Such is the act of March 1, 1875 (carrying penalties for exclusions from jury service on account of race, color, or previous condition of servitude), and we think it was fully authorized by the Constitution." *Ex parte Virginia* (1879) 100 U. S. 339, 347.

"Whenever by any action of a State, whether through its legislature or through its executive or administrative officers, all persons of the African race are excluded, solely because of their race or color, from serving as grand jurors, in the criminal prosecution of a person of the African race, the equal protection of the laws is denied to him, contrary to the Fourteenth Amendment of the Constitution * * *" *Carter* v. *Texas* (1900) 177 U. S. 442, 447.

This statement was repeated in the same terms in *Rogers* v. *Alabama* (1904) 192 U. S. 226, 231, and again in *Martin* v. *Texas* (1906) 200 U. S. 316, 319. The principle is equally applicable to a similar exclusion of negroes from service on petit juries. *Strander* v. *West Virginia* (1880) 100 U. S. 303. And although the State statute defining the qualifications of jurors may be fair on its face, the constitutional provision affords protection against action of the State through its administrative officers in effecing the prohibited discrimination. *Neal* v. *Delaware* 103 U. S. 370, 397; *Norris* v. *Alabama* (1935) 294 U. S. 587, 589.

"* * * The due process clause requires that every man shall have the protection of his day in court, and the benefit of the general law, a law which hears before it condemns, which proceeds not arbitrarily or capriciously but upon inquiry, and renders judgment only after trial, so that every citizen shall hold his life, liberty, property and immunities under the protection of the general rules which govern society. *Hurtado* v. *California*, 110 U. S. 516, 535. It, of course, tends to secure equality of law in the sense that it makes a required minimum of protection for everyone's right of life, liberty, and property, which the Congress or the legislature may not withhold. Our whole system of law is predicated on the general fundamental principle of equality of application of the law. 'All men are equal before the law,' 'This is a government of laws and not of men,' 'No man is above the law,' are all maxims showing the spirit in which legislatures, executives and courts are expected to make, execute and apply laws * * *" *Truax* v. *Corrigan* (1921) 257 U. S. 312, 332.

The foregoing statements do not, of course, necessarily decide the issue. If Congress has the power to enact legislation predicated on the failure of local officers to act or on acts of omission, then it is apparent that the requisite power must be found largely in the provision of the Fourteenth Amendment which reads, "nor [shall any State] *deny* to any person within its jurisdiction the equal protection of the laws." If the word *deny* can be said to be used in the same sense as "withhold," then inaction could properly be the subject of appropriate legislation. This matter is discussed by Willoughby, The Constitutional Law of the United States, second edition, volume 3, p. 1933–1937 as follows:

"* * * It seems reasonably clear from the decisions discussed in the preceding section that, where the officials of the States have been derelict in the performance of their official duties with regard to the protection of persons against lynching, or, it may be said, against any other form of violence, whether to persons or to their property, or has conspired with others to that end, there is ground for saying that there has been a deprivation of life, liberty or property by the State and therefore, that the prohibition of the Fourteenth Amendment has been violated, and therefore, that an act of Congress directed to the punishment of such dereliction would be constitutional. Equal protection of the laws would also be denied in cases in which it would appear that such derelictions had been motived by animosities against persons because of their race, nationality, or because of their inclusion within a certain social or religious or other class, group, or assocation. It is also probably correct to say that private individuals conspiring with State officials to deny to persons in the custody of State officials due process of law or the equal protection of the laws could be held responsible in the Federal courts, for, in such cases, under the general law of conspiracies according to which all the parties are principals, such private persons would, as to their status, be grouped with the State officials. * * *

"Whether it would be constitutional to provide for the trial in the Federal courts of persons participating in lynching, whom the State authorities refuse or neglect to prosecute to judgment, is highly doubtful. Such refusal or neglect to prosecute on the part of the State officials might be considered to violate the Fourteenth Amendment, and, therefore, be Federally punishable, but it is difficult to see how the fact that they had not been effectively proceeded against by the State authorities would operate to bring private individuals within the Federal jurisdiction which, under the Fourteenth Amendment, exists only with reference to violations by the States of the provisions of that Amendment. [See especially *James* v. *Bowman* (190 U. S. 127).] If such a statutory provision with reference to lynchings were upheld there would seem to be no logical reason why it would not be necessary to uphold statutes with similar provisions which

would relate to all cases in which the claim could be substantiated that State officials have been derelict in the performance of their official duties to the detriment of the personal or property rights of private individuals. Authority for the constitutionality of this provision has been sought in the statement of the court in *Virginia* v. *Rives* [100 U. S. 313.] that, in the enforcement of the prohibitions of the Fourteenth Amendment, Congress may use its discretion,—'It may secure the right—that is, enforce its recognition—by removing the case from a State court in which it is denied into a Federal court where it will be acknowledged.' It is clear, however, that this declaration had reference to cases already instituted in State courts and in which the Federal right had been denied, and that it would not cover cases in which there has been no State action and which were proposed to be originally brought in Federal courts. Authority has also been sought for this and other provisions of the proposed act by asserting that there is a 'peace of the United States' which is violated in the premises and hence a Federal jurisdictional right to act. This contention can scarcely be maintained since it is well established that there is no peace of the United States which can be violated except in so far as some specific Federal right, privilege, or immunity is violated; and it is also established that the right to life, liberty and property and to equality of protection of the laws are not, in themselves, affirmatively considered, Federal rights; they are, and remain, rights created or recognized by the laws of the States, though the persons enjoying them are Federally guaranteed against their impairment by the States.

"A strong case upon this point is that of *United States* v. *Wheeler*. [254 U. S. 281.] That case arose out of the forcible deportation by an armed mob of persons from the State of Arizona, and the bringing of indictments against the members of the mob under Section 19 of the Federal Criminal Code which penalizes the conspiring of two or more persons 'to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States.' In the instant case it was claimed that the deported individuals had been denied the right to reside and remain peacefully in the State, and that immunity from the violation of this right was Federally guaranteed to them. The Supreme Court, however, held this contention to be without ground, citing *Paul* v. *Virginia*, [8 Wall. 168.] *Ward* v. *Maryland*, [12 Wall. 418.] and the *Slaughter House cases*. [16 Wall. 36.] The court said: 'Undoubtedly the right of citizens of the States to reside peacefully in, and to have free ingress into and egress from, the several States, had, prior to the Confederation, a twofold aspect: (1) as possessed in their own States, and (2) as enjoyed in virtue of the comity of other States. But although the Constitution fused these distinct rights into one by providing that one State should not deny to the citizens of other States rights given to its own citizens, no basis is afforded for contending that a wrongful prevention by an individual of the enjoyment by a citizen of one State in another of rights possessed in that State by its own citizens was a violation of a right afforded by the [Federal] Constitution. This is the necessary result of Article 2, Section 2, which reserves to the several States authority over the subject, limited by the restrictions against State discriminatory action, hence excluding Federal authority except where invoked to enforce the limitation, which is not here the case.' This reasoning and conclusion would seem to be fully applicable to the provisions of the proposed Anti-Lynching Act."

An attempt to enforce the provisions of the equal protection clause in the manner proposed will run into the argument that neither the Fourteenth Amendment—broad and comprehensive as it is—nor any other amendment, was designed to interfere with the power of the State, sometimes termed its police power, to prescribe regulations to promote the peace and good order of the people. *Barbier* v. *Connolly*, supra, p. 31. Furthermore an argument will be raised that even if such regulations by the Federal Government were sustained there could be no assurance that the Federal law would be any more effective than the local law, or that a verdict of a Federal jury would differ from that of a State jury selected from the same people. Stil further it will be argued that the proposal is definitely antagonistic to the philosophy of our system of government and would tend to destroy local responsibility if local subdivisions were forced to exercise delegated sovereign powers of the State under a threat of punishment by the Federal Government exercising a superimposed police power. Some of the practical aspects of these arguments are illustrated in the instances related by Coleman, Freedom From Fear on the Home Front, Iowa L. R. 29: 415. Speaking of the application of U. S. C. 18: 51 and 52 he states that ultimately government can do little without the support of community public opinion. In some areas, the issue

of state's rights has a tendency to break the ranks of legal procedure and overflow into every stage of the trial, including the deliberations of the jury. Accordingly, acquittals in addition to those resulting from failure of proof, can be expected where the Federal Government seeks to prosecute for crimes traditionally deemed the sole concern of the State or local community (p. 423).

As a partial answer to these points it should be noted that these guaranties of protection already have been held to extent to all persons within the territorial jurisdiction of the United States without regard to differences of race, of color, or of nationality. See *Yick Wo* v. *Hopkins* (1886) 118 U. S. 356. They cover the action of the curators of a State university who represent the State in carrying out its educational policy of separating the races in its educational institutions by refusing to admit a negro as a student in the university law school because of his race. See *Missouri ex rel. Gaines* v. *Canada* (1938) 305 U. S. 337; and *Sipuel* v. *Bd. of Regents* (1948) 16 L. W. 4090.

Where the proceedings in a State court, although a trial in form by reason of the use of United States troops, were only in form and the appellants were hurried to conviction under the pressure of a mob without regard for their rights, the trial is without due process of law and absolutely void. See *Moore* v. *Dempsey* (1923) 261 U. S. 86. In this regard attention is invited to the drastic provisions of the Act of April 20, 1871 (R. S. 5299; U. S. C. 50:203) which reads:

"Whenever insurrection, domestic violence, unlawful combinations, or conspiracies in any State so obstructs or hinders the execution of the laws thereof, and of the United States, as to deprive any portion or class of the people of such State of any of the rights, privileges, or immunities, named in the Constitution and secured by the laws for the protection of such rights, privileges, or immunities, and the constituted authorities of such State are unable to protect, or, from any cause, fail in or refuse protection of the people in such rights, such facts shall be deemed a denial by such State of the equal protection of the laws to which they are entitled under the Constitution of the United States; and in all such cases, or whenever any such insurrection, violence, unlawful combination, or conspiracy, opposes or obstructs the laws of the United States, or the due execution thereof, or impedes or obstructs the due course of justice under the same, it shall be lawful for the President, and it shall be his duty, to take such measures, by the employment of the militia or the land and naval forces of the United States, or of either, or by other means, as he may deem necessary, for the suppression of such insurrection, domestic violence, or combinations."

Certainly it can be argued that if sufficient power is vested in the Federal Government to sustain the above enactment then the same power will sustain an exertion of a degree somewhat less than calling out the armed forces.

Mr. Justice Story early pointed out that the Constitution "unavoidably deals in general language. It did not suit the purposes of the pepole, in framing this great charter of our liberties, to provide for minute specifications of its powers or to declare the means by which those powers should be carried into execution. It was foreseen that this would be perilous and difficult, if not an impracticable, task. The instrument was not intended to provide merely for the exigencies of a few years, but was to endure through a long lapse of ages, the events of which were locked up in the inscrutable purposes of Providence." *Martin* v. *Hunter* (1816) 1 Wheat. 304, 326. Much of what Mr. Justice Story said applies to the language of the amendments which were later added.

Congress has a large discretion as to the means to be employed in the exercise of any power granted it. Every right created by, arising under, or dependent upon the Constitution may be protected or enforced by such means as Congress may deem best; if the Constitution guarantees a right, the National Government is clothed with authority to enforce it—the powers given to the National Government are not ineffective because the means of enforcing them are not expressly given. Congress has a large discretion as to the means to be employed, and may employ those means which, in its judgment, are most advantageous, taking care only that they are not inconsistent with the limitations placed upon the general power by the Constitution. The Constitution does not profess to enumerate the means by which he powers it confers shall be executed, and where an end is required and a duty is enjoined, the ability to perform it is contemplated to exist on the part of the functionaries to whom it is entrusted. See The Constitution of the United States of America (Annotated) S. Doc. No. 232—74th Cong. pp. 265–6 citing authorities.

The courts will determine whether the means employed by Congress to accomplish the ends sought have any relation to the powers granted by the Constitution, and if the measures adopted as most eligible and appropriate are adapted to

end to be accomplished, and are not inconsistent in letter or spirit with the limitations of the Constitution, the courts cannot declare them inexpedient or unwise. Every act of Congress, to be valid, must find in the Constitution some warrant for its passage; but while construction, for the purpose of conferring a power should be resorted to with great caution, yet resort must be had to every reasonable construction to save a statute from unconstitutionality, and a choice of means by Congress is not to be adjudged invalid unless the conflict between the Constitution and the statute is clear and strong. *Ibid*, citing *Wilkes* v. *Dinsman* (1849) 7 How. 89, 127; *U. S.* v. *Harris* (1883) 106 U. S. 629, 635 and other cases.

Among the powers expressly conferred upon Congress by the Constitution is the power to make all laws necessary and proper for carrying into execution the powers specifically granted to it, and all other powers vested by the Constitution in the Government of the United States, or any department or officer thereof. As stated earlier, Congress may use any means, in the exercise of this general power of legislation, deemed by it most eligible and appropriate, which are adapted to the end to be accomplished, and are consistent with the letter and the spirit of the Constitution. *Logan* v. *U. S.* (1892) 144 U. S. 263, 283 citing *McCulloch* v. *Maryland* 4 Wheat. 316, 421; and *Julliard* v. *Greenman* 110 U. S. 421. 440 and 441.

If the decisions in *U. S.* v. *Classic* (1941) 313 U. S. 299; *Smith* v. *Allwright* (1944) 321 U. S. 649; and *U. S.* v. *Screws* (1945) 325 U. S. 91 are indicative of the present trend to afford protection for civil and political rights, then perhaps some of the restrictions afforded by earlier decisions on the Fourteenth Amendment will be found not to preclude the enforcement of the proposed liability against individuals and political subdivisions. This would, as indicated earlier, require a construction of the equal protection clause to comprehend cases where such protection is withheld by reason of inaction on the part of local authorities, but such a construction, as Willoughby pointed out, could possibly also comprehend local political assassinations, gang warfare, or any other type of case where a claim could be substantiated that local officers were derelict in their duties to the detriment of individual rights.

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11. (a) United States Congress—Hearings before a subcommittee of the Senate Committee on Judiciary on H. R. 801, 76th Cong., 3d sess., February 6, 7, March 5, 12, and 13, 1940.
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12. List of antilynching bills introduced in Congress from January 20, 1900, through May 26, 1947, with notation of action taken (mimeographed list enclosed).
13. Antilynching bills introduced in Congress subsequent to May 26, 1947, 80th Cong., 1st sess.—H. R. 3850, 4155. Both these bills were referred to the Committee on the Judiciary, but no further action was taken.
14. Extension of remarks of Hon. Kenneth B. Keating, Congressional Record, vol. 93, p. 4591, November 20, 1947.
15. To Secure These Rights—The report of the President's Committee on Civil Rights, established by Executive Order 9808, December 5, 1946 (Federal Register, vol. 11, p. 14153), to make recommendations "with respect to the adoption or establishment, by legislation or otherwise, of more adequate and effective means and procedures for the protection of the civil rights of the people of the United States."—Discussion and recommendations with respect to antilynching legislation, pp. 20–25 and 157–158.

Constitutional Memorandum of American Jewish Congress

This memorandum on constitutionality of Federal antilynching bills is submitted at the suggestion of Senator Ferguson. It is designed to supplement the statement submitted to the committee on behalf of the American Jewish Congress by Albert E. Arent on January 21, 1948.

No attempt will be made here to cover all aspects of the bases of Congressional power to legislate with respect to lynching. Only two points will be dealt with: (1) The power of the United States Government to implement the provisions of section 1 of the fourteenth amendment and (2) the duty of the Federal Government to guarantee to each State a republican form of government under article IV, section 4 of the Constitution.

On the first of these points, we shall assume the validity of the doctrine of the *Civil Rights Cases* (109 U. S. 3) that the prohibitions of the fourteenth amendment apply only to acts by States and State officials. We do not believe that that doctrine is correct. The legislative history of the fourteenth amendment indicates strongly that the intent of its sponsors was much broader than the construction ultimately given the amendment by the Supreme Court. This point, however, has already been presented to this committee in some detail, and we shall not attempt to cover that ground again. Similarly, we shall not set forth here our reasons for believing that antilynching legislation is a proper exercise by Congress of its duty to implement the obligations of the United States under the United Nations Charter.

Point I. Effectuation of the requirements imposed upon the States by the fourteenth amendment demands action by the Federal Government to curb and punish lynching

The fourteenth amendment to the United States Constitution provides in part as follows:

"Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

* * * * * * *

"Sec. 5. The Congress shall have the power to enforce by appropriate legislation the provisions of this article."

For the purposes of this memorandum we assume that the requirements of due process and equal protection of the laws impose duties on States and State officials alone. It is well settled that the Federal Government may enforce those duties by appropriate legislation directed against violations of the duties by State officials (18 U. S. C., sec. 52; *Ex parte Virginia*, 100 U. S. 339 (1880); *Strauder* v. *West Virginia*, 100 U. S. 303 (1880); *Virginia* v. *Rives*, 100 U. S. 313 (1888)).

The duty thus imposed is not satisfied when a State does no more than lay down rules requiring its officials to comply with the Constitution. The State must, in addition, see to it that there is compliance in fact. When it fails to do so—when persons whom it has given official duties and powers interfere with due process or equal protection of the laws—the constitutional requirements are violated (*Ex parte Virginia*, 100 U. S. 339 (1880); *U. S.* v. *Classic*, 313 U. S. 299, 326 (1941);

Screws v. *U. S.*, 325 U. S. 91, 107–113 (1945)). As the Court said in *Ex parte Virginia* (100 U. S. at page 345):

"Whosoever, by virtue of public position under a State government, deprives another of property, life, or liberty, without due process of law, or denies or takes away the equal protection of the laws, violates the constitutional inhibition; and as he acts in the name and for the State, and is clothed with the State's power, his act is that of the State. This must be so, or the constitutional prohibition has no meaning. Then the State has clothed one of its agents with power to annul or to evade it."

It is generally considered that the early decisions of the Supreme Court construing the fourteenth amendment held unconstitutional all Federal statutes directed at conduct by private parties which resulted in deprivation of rights under that amendment. That is not true. All that was held was that, in the absence of a showing that the State had failed to curb the activities of private individuals, those activities could not be reached. Thus, in *U. S.* v. *Harris* (106 U. S. 629 (1883)), the Court invalidated a statute providing punishment for private persons who deprived any person of the equal protection of the laws. Basic to the decision in that case, however, was the assumption that the States could and would protect their inhabitants against wrongs committed by individuals. Thus it quoted from its earlier decision in *U. S.* v. *Cruikshank* (92 U. S. 542 (1876); 106 U. S. at 639)):

"The duty of protecting all its citizens in the enjoyment of an equality of rights was originally assumed by the States, and it remains there. The only obligation resting upon the United States is to see that the States do not deny the right."

The vice in the statute found to be unconstitutional was that it depended in no way on failure of the States to perform their function. The Court said (*ibid.*):

"When the State has been guilty of no violation of its provisions; when it has not made or enforced any law abridging the privileges or immunities of citizens of the United States; *when no one of its departments has deprived any person of life, liberty, or property without due process of law, or denied to any person within its jurisdiction the equal protection of the laws;* when, on the contrary, the laws of the State, as enacted by its legislative, and construed by its judicial, *and administered by its executive departments*, recognize and protect the rights of all persons, the amendment imposes no duty and confers no power upon Congress." [Emphasis supplied.]

Similarly, in the *Civil Rights cases* (109 U. S. 3), where the courts held invalid a Federal statute requiring equal treatment in places of public accommodation, the Court said (109 U. S. at p. 25):

"Innkeepers and public carriers, by the laws of all the States, so far as we are aware, are bound, to the extent of their facilities, to furnish proper accommodation to all unobjectionable persons who in good faith apply to them."

It assumed further that the ordinary individual right, when invaded in a manner "not sanctioned in some way by the State, * * * may presumably be vindicated by resort to the laws of the State for redress" (109 U. S. at p. 17). It held the statute under consideration invalid because (109 U. S. at p. 14):

"An inspection of the laws shows that *it makes no reference whatever* to any supposed *or apprehended* violation of the fourteenth amendment on the part of the States. It is not predicated on any such view. It proceeds *ex directo* to declare that certain acts committed by individuals shall be deemed offenses, and shall be prosecuted and punished by proceedings in the courts of the United States. It does not profess to be corrective of any constitutional wrong committed by the States; it does not make its operation to depend upon any such wrong committed. It applies equally to cases arising in States which have the justest laws respecting the personal rights of citizens, and whose authorities are ever ready to enforce such laws, as to those which arise in States that may have violated the prohibition of the amendment. In other words, it steps into the domain of local jurisprudence, and lays down rules for the conduct of individuals in society toward each other, and imposes sanctions for the enforcement of those rules, *without referring in any manner to any supposed action of the State or its authorities.*"

The Supreme Court expressly recognized that a State may violate the prohibitions of the fourteenth amendment by inaction as well as by action in *Truax* v. *Corrigan* (257 U. S. 312 (1921)). The State courts in that case had refused to issue an injunction to restrain picketing which had caused a serious loss of business to the plaintiff. Their refusal to act was based on a State statute amending previous law which had permitted injunctions in such situations. The

Supreme Court held that the inaction of the State was unconstitutional. It found that the refusal to issue an injunction deprived the plaintiff of property rights protected against invasion by the States under the fourteenth amendment. The invasion was accomplished solely by inaction.

When State officials fail or refuse to give protection to life itself they violate constitutional rights just as clearly. The Federal Government can and must prevent such violations. The thirteenth and fourteenth amendments to the Constitution are "enlargemens of the power of Congress. They are to some extent declaratory of rights, and though in form prohibitions, they imply immunities, such as may be protected by congressional legislation." *Ex parte Virginia* (100 U. S. at p. 345). The fourteenth amendment "was designed to assure to the colored race the enjoyment of all the civil rights that under the law are enjoyed by white persons, and *to give that race the protection of the general government, in that enjoyment, whenever it should be denied by the States.*" *Strauder* v. *West Virginia* (100 U. S. at p. 306). [Emphasis supplied.]

It is not necessary that the Government wait until a specific denial has taken place. In the exercise of any of its constitutional powers, the Government may either act to correct evils after the event or take preventive action to restrain the evils. Thus, in the exercise of the power of Congress over interstate commerce, it has been held that "if Congress deems certain recurring practices, though not really part of interstate commerce, likely to obstruct, restrain, or burden it, it has the power to subject them to national supervision and resraint." *United Mine Workers* v. *Coronado Co.* (259 U. S. 344, 408 (1922)).

Supreme Court decisions under the commerce clause provide a direct analogy to the question before the committee. They establish that where Congress finds that a specified practice, not otherwise within its jurisdiction, "may and from time to time does," jeopardize an interest which Congress is bound to protect, it may regulate the practice generally. In *Stafford* v. *Wallace* (258 U. S. 495 (1922)), the Supreme Court passed on the validity of the Packers and Stockyard Act of 1921 (42 Stat. 159). That statute adopted comprehensive regulations of the activities of commission men and dealers in the stockyards of the country. Passage of the act was prompted by certain abuses which Congress found to have existed in the stockyards. The Court held that despite the essentially intrastate nature of the stockyard operations, the fact that they had frequently impaired the flow of interstate commerce justified general regulation by the Federal Government. It held that since Congress could punish restraints on interstate commerce after they occurred, it could also "provide regulation to prevent their formation" (258 U. S. at 250). Continuing, the Court said (*id.*, at pp. 520–521):

"The reasonable fear by Congress that such acts, usually lawful and affecting only intrastate commerce when considered alone, will *probably and more or less constantly* be used in conspiracies against interstate commerce or constitute a direct and undue burden on it, *expressed in this remedial legislation*, serves the same purpose as the intent charged in the Swift indictment to bring acts of a similar character into the current of interstate commerce for Federal restraint. *Whatever amounts to more or less constant practice*, and threatens to obstruct or unduly to burden the freedom of interstate commerce is within the regulatory power of Congress under the commerce clause, and *it is primarily for Congress to consider and decide the fact of the danger and meet it.*" [Emphasis supplied.]

Accordingly, it was held that the statute was "carefully drawn to apply only to those practices and obstructions which in the judgment of Congress are likely to affect interstate commerce prejudicially" (*id.*, at p. 528).

A few months later, the Court, in *Hill* v. *Wallace* (259 U S. 44 (1922)) struck down the Futures Trading Act of 1921 (42 Stat. 187). That act imposed a confiscatory tax on all trading in grain for future delivery, excluding, however, trading which complied with certain comprehensive regulations laid down in the act. After holding that the act was not a justifiable exercise of the taxing power, the Court held that it could not be sustained under the commerce clause. Since the act was "without any limitation of the application of the tax to interstate commerce, or *to that which the Congress may deem from evidence before it to be an obstruction to interstate commerce*, we do not find it possible to sustain the validity of the regulations as they are set forth in this act" (259 U. S. at p. 68). [Emphasis supplied.] The Court found (*id.*, at p. 69) that "sales for future delivery on the board of trade are not in and of themselves interstate

commerce. They cannot come within the regulatory power of Congress, as such, unless they are regarded by Congress, from the evidence before it, as directly interfering with interstate commerce so as to be an obstruction or a burden thereon." The Court distinguished the *Stafford* case on the ground that, in passing the statute there reviewed, Congress had found the practices regulated "likely, unless regulated, to impose a direct burden on the interstate commerce passing through" (*ibid.*).

Thereupon Congress passed the Grain Futures Act of 1922 (42 Stat. 998). The act was expressly stated to be designed to protect interstate commerce. It contained findings that as a result of manipulations of grain transactions "sudden and unreasonable fluctuations in the prices thereof frequently occur * * * which are * * * an obstruction to and a burden upon interstate commerce * * * and render regulation imperative for the protection of such commerce and the national public interest therein" (Grain Futures Act, sec. 3). The comprehensive regulations of the statute were based on those findings.

In *Chicago Board of Trade* v. *Olsen* (262 U. S. 1 (1923)), the Supreme Court held that the new statute corrected the defects of the old. It said (262 U. S. at pp. 37, 40):

"In the act we are considering, Congress has expressly declared that transactions and prices of grain in dealing in futures are susceptible to speculation, manipulation, and control which are detrimental to the producer and consumer and persons handling grain in interstate commerce and render regulation imperative for the protection of such commerce and the national public interest therein."

"By reason and authority, therefore, in determining the validity of this act, we are prevented from questioning the conclusion of Congress that manipulation of the market for futures on the Chicago Board of Trade *may, and from time to time does*, directly burden and obstruct commerce between the States in grain, and that it recurs and is a constantly possible danger. For this reason, *Congress has the power to provide the appropriate means adopted in this act by which this abuse may be restrained and avoided.*" [Emphasis supplied.]

In sum, the Supreme Court has held that where certain practices frequently affect interstate commerce, it may regulate those practices generally, without showing in each case that they affect that commerce. So here, Congress, having found that lynchings frequently and indeed regularly are a manifestation of unconstitutional action or inaction by the States, can meet the problem by legislating against lynching generally.

We submit that Congress may and should find that lynchings regularly result from encouragement or at least condonation on the part of State officials. As we said in the statement submitted to this committee on January 21, "the machinery of the State, or part of it, creates the conditions which permit the functioning of these private governments. It does so by inaction and acquiescence even where it does not do so by direct participation. It thereby becomes, at the least, a silent partner to the lynching and gives the reality of State authority to the direct participants." Enactment of the Wagner-Morse bill would be no more than a determination by Congress that a situation of national concern has arisen which requires comprehensive Federal preventive action.

POINT II. EFFECTUATION OF THE DUTY OF THE FEDERAL GOVERNMENT, UNDER ARTICLE IV, SECTION 4, OF THE CONSTITUTION, TO GUARANTEE TO ALL STATES A REPUBLICAN FORM OF GOVERNMENT REQUIRES ACTION BY THE FEDERAL GOVERNMENT TO CURB AND PUNISH LYNCHING

In our statement of January 21, we suggested that the committee add to the Wagner-Morse bill a statement that its terms are designed to guarantee to every State in the Union a republican form of government. Even if a bill were ultimately passed without such a provision, we believe it could be held valid under the guarantee provision of article IV, section 4, on the ground that it did in fact have the effect of implementing that clause.

The Wagner-Morse bill would punish private persons who exercise the "power of correction or punishment * * * with the purpose or consequence of preventing the apprehension of trial or punishment by law" of persons suspected of crimes. When the power of corerction or punishment is so exercised, the republican form of government ceases to exist in anything more than name.

Article IV, section 4, of the Constitution lays an affirmative duty on the Federal Government to prevent this evil. It reads: "the United States *shall* guarantee

to every State in this Union a republican form of government." [Emphasis supplied.] There can be no doubt that these words require the Federal Government to grant the reality of republican government as well as the form.

In a long line of decisions, beginning just short of 100 years ago, the Supreme Court has held that "the enforcement of that guarantee, according to the settled doctrine, is for Congress, not the courts." *Highland Farms Dairy* v. *Agnew* (300 U. S. 608, 612 (1937). Accord: *Luther* v. *Borden* (48 U. S. (7 How.) 1 (1849)); *Texas* v. *White* (74 U. S. (7 Wall.) 700 (1879)); *Taylor & Marshall* v. *Beckham* (178 U. S. 548 (1900)); *Pacific Telephone Co.* v. *Oregon* (223 U. S. 118 (1912)); *Ohio* v. *Akron Park District* (281 U. S. 74 (1930)).

In the leading case *Luther* v. *Borden* (48 U. S. (7 How.) at p. 45), the Supreme Court recognized the affirmative obligation of the legislative branch to act under this clause, saying, "Unquestionably a military government, established as the permanent government of the State, would not be a republican government, and *it would be the duty of Congress to overthrow it.*" [Emphasis supplied.] Moreover, it has been held that the authority of the Federal Government to adopt laws punishing sedition and advocacy of insubordination in the armed forces derives, in part at least, from such "specific constitutional grants of power" as article IV, section 4. (*Dunne* v. *U. S.*, 138 F. 2d, 137, 140 (C. C. A. 8, 1943).)

The powers of Congress under this clause are as broad as may be needed to effectuate its purpose. "In the exercise of the power conferred by the guarantee clause, as in the exercise of every other constitutional power, a discretion in the choice of means is necessarily allowed." (*Texas* v. *White*, 74 U. S. (7 Wall.) at p. 729.)

Even the less positive command of article IV, section 2 (3) of the Constitution that "No person held to service or labor in one State * * * shall * * * be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due," has been held to form a proper basis for affirmative action by Congress, passage of the Fugitive Slave Acts. (*Prigg* v. *Pennsylvania*, 41 U. S. (16 Pet.) 539, 618–619 (1842).)

The duty of protection which Congress owes runs not to the existing government but to the people of the State. As used in article IV, section 4, "the principal sense of the word [State] seems to be that primary one to which we have adverted, of a people or political community, as distinguished from a government * * *. In this clause a plain distinction is made between a State and the government of a State." (*Texas* v. *White*, 74 U. S. (7 Wall.) at p. 721.) Thus, it is the people which must be protected against suspension of orderly government, a protection which is clearly needed where lynch law holds sway. The duty to act is clear when constitutional government is "in imminent danger of being overthrown by an opposing government, set up by force within the State." (*Texas* v. *White*, 74 U. S. (7 Wall.) at p. 730.)

As we have shown, a lynching does just that. It replaces the elected government with government by a mob. It replaces courts established by the elected government with kangeroo courts. It replaces punishment according to law with punishment according to the whims of self-appointed executors. This is an evil which Congress is required to prevent. Article IV, section 4, of the Constitution provides ample authority for legislation to achieve that end.

CONCLUSION

We submit that Congress has full power under the Constitution to enact a statute broad enough to deal effectively with the problem of lynching, a statute which provides Federal penalties for private persons as well as public officials who participate in mob violence. Ample support for such a statute appears in the republican guarantee clause of article IV, section 4, in the fourteenth amendment, and in the treaty-making power. In view of the fact that lynching is an evil which is an appropriate subject for action by any government and the fact that experience shows the need for Federal action, Congress should use its constitutional powers to end lynching now.

Respectfully submitted.

AMERICAN JEWISH CONGRESS,
WILL MASLOW,
JOSEPH B. ROBISON,
Attorneys.

FEBRUARY 2, 1948.

STATEMENT OF GEORGE MARSHALL, CHAIRMAN OF THE BOARD OF THE CIVIL RIGHTS CONGRESS IN SUPPORT OF THE WAGNER-CASE FEDERAL ANTILYNCHING BILL BEFORE THE SUBCOMMITTEE HEARING OF THE SENATE JUDICIARY COMMITTEE

In behalf of the Civil Rights Congress, a Nation-wide organization dedicated to the protection and extension of the civil rights of the American people, I wish to urge passage in this session of the Wagner (S. 1352)-Case (H. R. 3488) antilynch bill.

This bill is one of the most important measures to come before Congress since the adoption of the fourteenth amendment. The Negro people have waited more than 80 years for the passage of this bill together with other related measures which are required to give them the full equality to which they are entitled. The great majority of the American people are increasingly incensed at the failure to pass this legislation in the face of the 4,719 lynchings since 1882 and in the face of the continued practice of this most horrible of crimes.

Legislation of this general type has been passed by the House four times since 1908. Presidential candidates and the major political parties have made repeated campaign statements in support of such legislation and continue to do so today. The American people have become impatient and insistent that strong antilynch legislation as embodied in the Wagner-Case bill be passed overwhelmingly and without further delay in the Senate.

The crime of lynching can no longer be tolerated in America. No year has been free from lynchings. The actual number of lynchings per year have been far greater than the official figures indicate. Thus in 1946 the official total of 6 lynchings fails to include 13 other recorded murders of Negroes which are lynchings under any reasonable interpretations of the term.

The question of the exact number of people lynched, however, is not the whole issue. Civil rights are indivisible. So long as a single lynching occurs, the most sacred of all civil rights, the right to life and liberty, is endangered for all Americans.

Lynching, furthermore, is the kingpin of the entire Fascist system of white supremacy, particularly as it is practiced in the South. So long as lynchers continue to go unpunished—and they do—this most horrible of crimes will remain the ultimate threat used by the white-supremacists to continue their reign of terror over the Negro people, to divide the Negro and white people, and to divert attention whenever their personal and political desires are seriously threatened.

Lynching itself is the epitome of the practice existing in all southern States, and in many northern States, whereby Negroes are condemned to live as second-class citizens and, in many instances, placed outside the protection of the law. Stemming from lynching, there are such other acts of violence against the Negro people as the gouging out of the eyes of Isaac Woodward and the countless other acts of police brutality committed and threatened daily. Likewise based on lynchings are the organization of mob attacks against Negro communities, incorrectly called race riots, and the countless day-by-day abuses and threats by white people in power under the slogan of "keeping Negroes in their place." So long as groups of white people take the law into their own hands and lynchers can proceed without fear of being brought to justice, the pattern of violence and repression against the Negro people and other minorities will also continue.

The wide implications of the ultimate threat of lynching were brought out clearly in evidence which the Civil Rights Congress helped to gather in connection with the proceedings which resulted in the ousting of Senator Bilbo because of his conduct in the July 1946, Mississippi primary campaign. It was brought out that many acts of violence were committed against Negroes who tried to vote and that in a number of instances whole Negro communities were told to stay away from the polls—or else. Between the inflammatory statements of Bilbo, the acts of violence, the open threats of more violence, the overwhelming majority of qualified Negro voters were kept from the polls. This resulted in Bilbo's winning the primary. These outrages, committed clearly for political purposes, were made possible by the ultimate threat of the unpunished lynching and the attitude of mind and action of the white supremacists which follow from this; namely, that they can do no wrong and are free from prosecution where Negroes are concerned.

If lynchers are vigorously prosecuted and brought to justice the whole structure of white supremacy and systematic terrorization and segregation of the Negro people will be vitally weakened.

The history of the past half century has amply proved that the Southern States under poll-tax leadership are incapable or unwilling to bring lynchers to justice. This was demonstrated forcefully last year when the 31 men who were generally known to have participated in the lynching of Willie Earle in Greenville, S. C., were acquitted by the local jury amidst great celebration.

It is clear that Federal antilynch legislation is needed. It must be strong and effective as provided in the Wagner-Case bill. Not only must persons participating in lynch mobs and assisting in lynchings be prosecuted and given heavy punishments, but in addition State officers failing to protect a person against the hazard of lynching must be subject to punishment; the community in which a lynching occurs must be made liable to the person injured or to the next of kin in the event of death.

There can be no question as to the constitutionality of the Wagner-Case bill as has been shown by able lawyers at these hearings and at many legislative hearing in previous years. It is authorized under the fourteenth amendment, the commercial clause, the guaranty of a republican form of government and the treaty-making power. The fourteenth amendment has long demanded this legislation for its full implementation. Our recent obligations under the Charter of the United Nations "to promote universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, or religion," further emphasizes the urgency of this measure.

A strong and effective antilynch law has long been demanded as a matter of justice and human rights for the Negro people. It is also a prerequisite to the full protection of the civil and democratic rights of all Americans. In a contracting world of many races and nationalities, the passage of this legislation and companion measures is essential before our country can hope to have the respect and confidence of other nations as a spokesman for democracy.

I therefore urge that your subcommittee and the full Judiciary Committee report the Wagner-Case bill out favorably and bring it to the floor of the Senate for passage at the earliest possible moment. May I urge you further to remind the Republican and Democratic Party leaders that the American people are becoming impatient.

There has been no lack of statements, messages and platform promises deploring the absence of equal protection under the law for the Negro people. The current statements of the leadership of the Republican Party, the report of the President's Committee on Civil Rights, and the President's recent message urging enactment of a series of measures including a Federal antilynching bill come in an election year.

But these expressions can become a substitute for action. And it is action that is needed now to make lynching a Federal crime. Every dceent American will have reason to be incensed if this legislation is merely passed by the House as a noble election gesture and for a fifth time allowed to die there. There is every warrant for the demand that the Federal antilynching bill be passed in this session by both Houses of Congress.

STATEMENT OF MARTIN POPPER, VICE PRESIDENT OF THE NATIONAL LAWYERS GUILD, IN SUPPORT OF S. 1352

The National Lawyers Guild supports wholeheartedly the provisions of S. 1352. This support is embodied in a resolution unanimously adopted by the national executive board on December 28, which reads as follows:

"During the past 50 years more than 5,000 persons have met death in the United States by lynching. In recent years all of the lynch victims have been Negroes. Although every State has laws punishing such conduct as murder, rarely have lynchers even been prosecuted. The few prosecutions have usually resulted in acquittals. So far as we have been able to discover, no lyncher of a Negro has ever been given a sentence commensurate with his offense.

"The National Lawyers Guild deems it imperative that the Federal Government immediately enact effective legislation making lynching a Federal crime. We therefore, endorse the Wagner-Morse-Case antilynching bill (S. 1352 and H. 3488) and urge its speedy enactment by the Eightieth Congress."

Our policy of support for this bill rests upon the high concern of the fourteenth amendment with the elementary rights of individual victims and the necessity of fostering world peace by honoring treaties making racial discrimination an international offense.

The fourteenth amendment was adopted because of the doubt that Congress had power to protect recently freed Negroes from violence and discrimination. However, even without it Congress had adopted the Civil Rights Act of 1866, which protected persons against deprivation because of race, color, or previous condition of servitude of any rights enjoyed by white persons.

The sponsors of this act believed that section 1 of the thirteenth amendment, providing that "Neither slavery nor involuntary servitude * * * shall exist within the United States" and section 2 providing that "Congress shall have power to enforce this article by appropriate legislation," fully authorized legislation punishing any discrimination, whether under guise of law, custom, or prejudice against a person because of race, color, or previous condition of servitude. The congressional proponents of the Civil Rights Act of 1866 reasoned that slavery and involuntary servitude would not in fact be abolished so long as such "badges of slavery" survived.[1] They were used to having the Supreme Court find implied in the Constitution a grant to Congress of whatever power was deemed necessary to protect the property of the owner of a slave irrespective of any reserved power in the States, including even the power to impose on every citizen the duty to render affirmative assistance to aid in recovering of runaway slaves when requested.[2]

Some of the proceedings under the Civil Rights Act of 1866 indicate how far it was believed to go. The president of a railway company in Mobile, Ala., which refused to carry Negroes in the same car with white persons, was bound over to the Federal court for violation of the act.[3] Magistrates who refused to allow Negroes to testify were arrested.[4] The mayor of Mobile, Ala., was convicted for banishing a Negro boy from the city.[5]

The draftsmen and sponsors of the fourteenth amendment repeatedly asserted on the floor of Congress in the debates preceding adoption of the amendment, that they wanted to write the Civil Rights Act of 1866 into the Constitution.[6] Opponents of the amendment during the debates likewise recognized this as the objective of its sponsors.[7]

In addition, during committee hearings and debates, John A. Bingham, the draftsman of section 1 of the amendment and in charge of its course through the House[8] and Senator Howard, in charge of the bill in the Senate,[9] each made it clear that the "enjoyment of life" was one of the rights to be protected by the fourteenth amendment.

Furthermore, in debates on legislation to enforce the fourteenth amendment, both Bingham and Howard, as well as many other Congressmen, repeatedly declared that under the fourteenth amendment Congress was empowered to punish not only State officers but all individuals who violated the protected rights.[10]

They explained that a State was to be deemed to have denied the equal protection of its laws when the inequality resulted from omission as well as when it arose through commission. If a State did not enact laws to punish those who committed acts of discrimination or violence on account of race or color or did not enforce such laws, then Congress had the power and the duty to act and the Federal courts to punish offenders. Thus, not all murder or robbery was to be made a Federal offense, but only those offenses which the State failed to

[1] Congressional Globe, 39th Cong., 1st sess., pp. 321–323, 340.
[2] For a description of the textent to which Congress had exercised this power and courts had sustained it, see dissenting opinion of Mr. Justice Harlan in the *Civil Rights cases*, 109 U. S. 3, 28–31.
[3] McPherson's Scrapbook, The Civil Rights Bill, p. 136.
[4] Ibid., p. 184.
[5] Ibid., p. 115.
[6] Congressional Globe, 39th Cong., 1st sess., pp. 1151–1153 (Thayer), 1291–1292 (Bingham), 2459 (Stevens), 2461 (Garfield), 2465 (Thayer), 2498 (Broomall), 2502 (Raymond), 2511 (Elliot), 2896 (Howard).
[7] Ibid., p. 2467 (Bayer), 2506 (Eldridge).
[8] Congressional Globe, 39th Cong., 1st sess., appendix, p. 429; cf. Congressional Globe, 39th Cong., 1st sess., pp. 14, 813, 1034, 2542–2543; Journal of Reconstruction Committee, pp. 7, 9, 12, 14; Horace E. Flack, the Adoption of the Fourteenth Amendment (1908), pp. 80–81.
[9] Congressional Globe, 39th Cong., 1st sess., p. 2765, quoting from *Corfield* v. *Coryell*, Fed. Cas. No. 3230, 4 Wash. Cir. Ct. 380.
[10] Congressional Record, 42d Cong., 1st sess., pp. 83–85, 150–154, 251, 375, 475–477, 504–506.

punish; and even then only where the failure to punish constituted an unequal treatment based on race, color, or previous condition of servitude.[11]

Legislation enacted by Congress during the decade following the adoption of the fourteenth amendment took the forms the sponsors of the amendment had explained would be authorized by it. One of the enforcement acts, popularly known as the Ku Klux Act,[12] consisted of five sections, the first of which made any person, who, under color of any law, statute, custom, or regulation of any State, should deprive anyone of any rights, privileges, or immunities secured by the Constitution of the United States, liable to the party injured in any action at law, suit in equity, or other proper proceeding for redress, such proceeding to be prosecuted in the Federal courts. The second section provided that if two or more persons conspire or combine together to do any act in violation of the above-mentioned rights or privileges, which act, if committed within a place under the sole and exclusive jurisdiction of the United States would, under the laws of the United States, constitute the crime of either murder, manslaughter, mayhem, robbery, assault and battery, perjury, subornation of perjury, criminal obstruction of legal process, or resistance of officers in discharge of official duty, arson, or larceny, and if one or more of the parties to the conspiracy or combination do any act to effect the object thereof, all the parties to the conspiracy or combination shall be deemed guilty of a felony, and on conviction, be liable to a penalty of not more than $10,000, or to imprisonment for not more than 10 years, or both, at the discretion of the court; but in case of murder, the penalty to be death. The third section provided that where any portion of people were deprived, by insurrection, domestic violence, or combination, of any of the rights or privileges secured by the bill, and constituted authorities of the State should fail to protect them in these rights, either by inability, neglect, or refusal, and should fail or neglect to apply to the President for aid, such facts were to be deemed a denial by the State of the equal protection of the laws, to which they were entitled under the fourteenth amendment. It was declared to be the duty of the President in such cases to employ the militia or land and naval forces of the United States as he might deem necessary.

During the debates which preceded passage of this act Mr. Bingham made a speech in which he explained his intent in drafting section 1 of the fourteenth amendment. He stated his belief that the language used not only was intended to but did in fact confer upon Congress powers which it never before had and that under them Congress could enact laws for the protection of citizens both as against the States and individuals in the States. Under the amended Constitution, Congress had the power, he asserted, to provide against the denial of rights by the States, whether the denial was in the form of acts of commission or omission.[13] Other Members of Congress made similar statements.[14]

The Federal Department of Justice had been in existence less than a year when the Ku Klux Klan Act was enacted.[15] It set out to vigorously enforce this law. Hundreds of persons were indicted and convicted. In June 1871, District Attorney Starbuck reported from North Carolina that the Federal grand jury had returned indictments against 21 different bands of men "going in diguise at night, whipping, shooting, and wounding unprotected citizens." In most of the cases, said he, "the proof shows that these outrages were committed to intimidate the victims to abandonment of their Republican and Union principles."[16]

At the November 1871 term of the Federal circuit court at Columbia, S. C., 420 indictments were found for violation of the enforcement acts. Fixe persons were tried and found guilty, and 25 pleaded guilty. "In every case submitted to a jury," reported the Attorney General proudly, "the verdict was against the prisoner notwithstanding the best defense which skilled counsel, with effective external aid, could make."[17]

Former Attorney General Homer Cummings tells us that "the Klan was disorganized by the initial success of the prosecution."[18] Such a statement coming from this source is particularly indicative of the effectiveness of Federal intervention to change the pattern in the South, for the same author remarks that "the Ku Klux had always existed, but the organization was known as the 'patrol'

[11] Congressional Globe, 41st Cong., 2d sess., pp. 3611–3613; Congressional Globe, 42d Cong., 1st sess., App., pp. 83–85, 317, 334, 429, 459, 475–477.
[12] 17 Stat. 13, April 20, 1871.
[13] Congressional Record, 42d Cong., 1st sess., appendix, pp. 83–85.
[14] See Flack, op. cit., pp. 226–249, for a full discussion of the debates on this bill and their significance in interpreting the fourteenth amendment.
[15] Homer Cummings and Carl McFarland, Federal Justice (1937), pp. 230–231.
[16] Quotes in Cummings and McFarland, op. cit., pp. 236–237.
[17] Annual Report of the Attorney General for 1871, p. 6. See Cummings and McFarland, op. cit., pp. 238–239.
[18] Cummings and McFarland, op. cit., p. 237.

and was protected by public sentiment." He states that the then district attorney in Kentucky maintained that the wholesale outrages to Negroes "were no new thing in the South but were a commitment of the institution of slavery." [19]

The Civil Rights Act of 1875,[20] likewise shows the intent of those who framed and adopted the fourteenth amendment. It provided that all persons are "entitled to the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances on land or water, theaters and other places of public amusement," and made it a misdemeanor for any person to violate this right. The debates preceding passage of this act contain further elucidation by Members of Congress who participated in the adoption of the fourteenth amendment of their intent.[21]

All of this legislative history of the fourteenth amendment remained forgotten for years. But historians are today generally agreed that those who framed and adopted the fourteenth amendment intended to authorize the Federal Government to protect life and to do so whether or not the violation arose from State action or individuals acting in concert.[22] Historians are also agreed that none of the proceedings in committees or on the floor of Congress during the adoption of the amendment were considered by either the majority nor the minority of the Supreme Court in the Slaughter House or other early cases, where the first interpretations of this amendment by the Supreme Court took place.

As a matter of fact historians even assert that none of this material was presented to the Court by counsel for either side in the Slaughter House case.[23]

We believe that if a statute were adopted by Congress punishing violence or murder when committed against a person of a minority group because of his race, color, creed, or national origin it would today be upheld by the Supreme Court. A presentation to the Court of the explanations of the sponsors of the fourteenth amendment of their intent would go a long way toward convincing the Court that such a statute is constitutional. The present Court has an unexcelled record for overruling reactionary precedents and returning the original Constitution and its amendments to the purposes intended by its creators. Thus the commerce clause has become a grant of as yet, unlimited, power instead of a restriction. By 1946, "every decision which had invalidated a congressional exercise of the commerce power had been disapproved, or distinguished to death." [24] The guarantees of freedom of speech and press have been held protected by the fourteenth amendment, even when they take the form of picketing, with reversals of decisions invalidating State anti-injunction laws.[25] So on down the line, a white primary is invalid where as a few years ago a similar primary was valid,[26] agriculture regulated,[27] minimum wages fixed,[28] discrimination for union activity prohibited [29]—all reversals of prior positions. There is every reason to expect a similar victory in the field of congressional power to banish lynching.

Article VI of the Constitution provides that:

"All treaties made or which shall be made, under the authority of the United States, shall be the supreme law of the land."

And Article I, section 8, clause 10, empowers Congress:

"To define and punish * * * Offenses against the law of nations."

The Supreme Court has recognized that under these two sections Congress has broad powers to legislate as to matters of importance to our international affairs. Thus in *Missouri* v. *Holland*,[30] Mr. Justice Holmes, speaking for the Court, stated:

"If the treaty is valid there can be no dispute about the validity of the statute

[19] Ibid., p. 233.
[20] 18 Stat. 335, March 1, 1875.
[21] See Flack, op. cit., pp. 249–277.
[22] Horace E. Flack, the Adoption of the Fourteenth Amendment (1908), pp. 75–77, 81–85, 90, 232–237, 239, 242, 245, 247, 277; Carl Brent Swisher, American Constitutional Development (1943), pp. 329–334; Louis B. Boudin, Truth and Fiction About the Fourteenth Amendment, 16 New York University Law Quarterly Review (November 1938), 19; Howard Jay Graham, the "Conspiracy Theory" of the Fourteenth Amendment, 47 Yale Law Journal (January 1938), 371.
[23] Swisher, *op. cit.*, pp. 336–345.
[24] Robert L. Stern, the Commerce Clause and the National Economy, 1933–46, 59 Harvard Law Record, 645, 883, 946.
[25] Contrast *Thornhill* v. *Alabama*, 310 U. S. 88 with *Truax* v. *Corrigan*, 257 U. S. 468.
[26] Contrast *Smith* v. *Allright*, 321 U. S. 649 with *Grovey* v. *Townsend*, 295 U. S. 45.
[27] *Wickard* v. *Filburn*, 317 U. S. 111.
[28] *West Coast Hotel Co.* v. *Parrish*, 300 U. S. 379; *United States* v. *Darby*, 312 U. S. 100.
[29] *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1.
[30] 252 U. S. 416.

under article I, section 8, as a necessary and proper means to execute the powers of the Government." [31]

"Acts of Congress are the supreme law of the land only when made in pursuance of the Constitution, while treaties are declared to be so when made under the authority of the United States." [32]

"It is obvious that there may be matters of the sharpest exigency for the national well-being that an act of Congress could not deal with, but that a treaty followed by such an act could, and it is not lightly to be assumed that, in matters requiring national action, 'a power which must belong to and somewhere reside in every civilized government' is not to be found." [33]

"No doubt the great body of private relations usually fall within the control of the State, but a treaty may override its power." [34]

Under these broad principles, never questioned or narrowed by any subsequent decision of the Supreme Court, we have merely to examine the Charter of the United Nations to find that the Senate, by ratifying it,[35] has raised to the stature of the supreme law of the land the obligation of the United States to promote "universal respect for, and observance of, human rights and fundamental freedoms for all without distinctions as to race, sex, language, or religion." [36]

Moreover, article 56 pledges all members of the United Nations to take joint and separate action in cooperation with the organization for the achievement of this purpose. Clearly, we have here an adequate constitutional basis, either under the power to implement treaties or the power to define offenses against international law, for a statute protecting all individuals against any violence or threats of violence because of race or religion. Indeed, should Congress fail to take such action, it would have culpably failed to carry out the obligations which this Nation has assumed to the other peoples of the world.

TESTIMONY BEFORE COMMITTEE ON THE JUDICIARY ON WAGNER-MORSE ANTILYNCHING BILL, S. 1352, ON BEHALF OF NATIONAL COUNCIL OF JEWISH WOMEN, TUESDAY, JANUARY 27, 1948, BY MRS. LOUIS OTTENBERG, MEMBER, NATIONAL COMMITTEE ON EDUCATION AND SOCIAL ACTION AND MEMBER OF NATIONAL BOARD

The National Council of Jewish Women, an organization of 70,000 women in over 200 communities all through the country, wishes to go on record in favor of S. 1352, the Morse-Wagner antilynching bill.

The right of each individual to physical freedom, to security against violence, and to the orderly processes of law is vital to the stability of our democractic society. While most Americans have these rights, many of our people still suffer from the fear of violence or death at the hands of a mob or from brutal police treatment.

Lynching and mob violence have been blights on our democratic record throughout our history. Though there has been a substantial and steady decline in the number of lynchings which have occurred in the past two decades (from a total of 64 in 1921 to an average number of no more than 6 per year since 1940), there has not yet been a year when America was wholly free of lynchings. The decline in the number of such crimes is encouraging, but so long as one individual is threatened by mob action, and so long as the existing law is not capable of coping with the perpetrators of such violence, we are not fulfilling our obligations to all our citizens. If the States do not protect the rights of the individual under custody, then there must be Federal legislation which will safeguard these rights and give the individual legal recourse.

The absence of antilynching legislation on the Federal statute books is a serious lapse, and one which leaves us open to criticism. While our record in the field of civil liberties has been on the whole an excellent one, and while the greatest number of our citizens enjoy freedoms which are found nowhere else in the world today, we are nevertheless subject to criticisms by all nations, totalitarian as well as democratic, if a single one of our citizens is denied the fundamental rights of personal safety under law.

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[31] At. p. 432.
[32] At. p. 433.
[33] At p. 433.
[34] At p. 434.
[35] The Senate ratified the United Nations Charter as a treaty on July 28, 1945, 91 Congressional Record, 8189-8190.
[36] Art. 55, c.

We must silence those critics of the American way of life who point to the "lynchings in the South" as the prime example of our treatment of minorities, and who exploit the occasional case of mob violence as the rule, rather than the exception.

We must eliminate this powerful propaganda club held over our heads, and the way to eliminate it is by declaring lynching a Federal offense, carrying specified provisions for enforcement and punishment.

The President's Committee on Civil Rights called for the enactment of an anti-lynching law. The Wagner-Morse bill embodies all the principles set forth in the committee's report, by giving a broad definition of lynching providing for punishment of the lynch mob, as well as considering the officers of the law liable for any dereliction of duty which leads to violence; providing for compensation to the victim or his family; and assuring that all criminal prosecutions under the act would be brought in a Federal district court. We believe that all of these provisions are essential effectively to curb and punish the crime of lynching.

In line with its traditions of working for the fundamental liberties of all men and the rights of minorities, and recognizing that a lynching anywhere in the United States will have political and social repercussions all over the world, the National Council of Jewish Women calls for immediate passage of S. 1352, for only by the elimination of the troublesome blemishes on our national complexion can we hope to gain the confidence and trust of the peoples of the world.

RESOLUTION OF THE AMERICAN CIVIL LIBERTIES UNION ON S. 42, S. 1352, S. 1465, JANUARY 1948

The American Civil Liberties Union has consistently supported all antilynching bills in Congress, in order to secure Federal intervention in all cases of mob violence against Negroes and others. We note with satisfaction the recent report of the President's Committee on Civil Rights, which heartily endorsed Federal antilynching legislation.

We have carefully studied S. 42, S. 1352, and S. 1465, which we find adequate and proper legislation to remedy a great evil. We do not believe that the constitutional objections raised to this exercise of Federal power are valid. The tragic record in many States of indifference, inaction, and, in some cases, of active participation by State officers in mob violence, would leave the National Government derelict in its duty if it did not intervene.

Furthermore, the vulnerability of the United States on racial matters is now apparent in dealing with world issues of racial justice and equality. Enactment of the proposed legislation will in large part answer attacks on the sincerity of our democratic professions.

We therefore urge as "must" legislation the immediate passage of antilynching legislation.

THE PROTESTANT COUNCIL,
OF THE CITY OF NEW YORK,
New York 5, N. Y., June 20, 1947.

Hon. ALEXANDER WILEY,
Committee on the Judiciary,
United States Senate, Washington, D. C.

DEAR SENATOR WILEY: This commission has adopted the attached resolutions which I am passing on to you. They endorse the Federal Antilynching Act (H. R. 3488 and S. 1352), the bill creating an Evacuation Claims Commission (H. R. 2768), and the bill granting the Attorney General power to stay the deportation of persons not allowed to become citizens because of their race (H. R. 2933).

The members feel a deep concern for the inalienable rights and liberties of all persons in a Christian and democratic country. These rights must be granted by the Federal Government, when denied by local officials, and when our national policy places undue hardship on individuals.

We urge passage of these bills in this session of Congress so that justice will be partially granted by them and we count on you to exert your efforts on their behalf.

Sincerely yours,

ROBERT W. SEARLE, *Executive Secretary.*

RESOLUTION ON THE FEDERAL ANTILYNCHING BILL BY HUMAN RELATIONS COMMISSION, THE PROTESTANT COUNCIL OF THE CITY OF NEW YORK

The human relations commission of the Protestant Council of the City of New York wishes to record its endorsement of the Federal antilynching bill (H. R. 3488 and S. 1352) and to urge passage of this bill at this session of Congress.

Lynching is a fundamental denial of human right. It is a defiance of law and the processes of justice. It is also a shame of America which, flaunted before world, does much to undermine faith and hope in democracy.

Since 1882 there have been 4,932 lynchings in the United States and in 99.2 percent of these no punishment resulted. Recent cases have evidenced the inadequacy of protection furnished American citizens by local and State police authorities and the inadequacy and futility of local efforts at prosecution.

Because the police power of the States is so obviously and flagrantly derelict in the prevention of lynching, the commission believes that for the good name of the Nation and for the protection of its citizens, lynching, like kidnaping, should be subject to Federal action.

NATIONAL ASSOCIATION OF COLORED GRADUATE NURSES, INC.,
New York 19, N. Y., July 21, 1947.

Senator ALEXANDER WILEY,
Chairman, Senate Judiciary Committee, Senate Chambers,
Washington, D. C.

MY DEAR SENATOR WILEY: At the recently held biennial convention of the National Association of Colored Graduate Nurses, held in Atlanta, Ga., it was unanimously voted to send the following resolution:

"Whereas the incidence of lynchings has taken a sharp rise in this country during the recent period; and

"Whereas such atrocities are a blot on the entire Nation; be it therefore

"*Resolved*, That H. R. 3488 and S. 135 be immediately enacted into law and that the Senate rules governing cloture be revised in order to prevent the filibustering which has caused the defeat of previous bills."

This resolution was adopted by nearly 400 representatives from 26 States representing 8,000 Negro nurses in the United States.

We wish to express our deep appreciation to you, Senator Wiley, for coauthoring this excellent piece of legislation and we pledge our full support in speeding its passage.

We would also like to have our resolution incorporated into the House hearings report.

Respectfully,

Alma Vessels,
ALMA VESSELS, R. N.,
Executive Secretary.

To the Honorable Judiciary Committee and Congress of the United States of America, Washington, D. C.:

SOUTHERN ASSOCIATION FOR THE IMPROVEMENT OF COLORED CITIZENS AND GOOD CITIZENSHIP, INC., BY REV. G. M. BANKS, SUPREME PRESIDENT; B. L. ESTES, SUPREME SECRETARY; J. H. MOTEN AND RUBYE BAILEY, TENNESSEE; R. L. THOMAS AND ALTEE CROWE, MISSISSIPPI; J. D. DANIELS AND REV. E. L. HARRIS, ARKANSAS; REV. E. SIMMONS AND TEASEY BIGGINS, INDIANA, PETITIONERS, *vs.* EX PARTE

Petitioners would most respectfully show unto the honorable Judiciary Committee and the Congress of the United States of America as follows:

I

That the petitioners, Southern Association for the Improvement of Colored Citizens and Good Citizenship, Inc., is a corporation incorporated ahd organized in Tennessee and whose principal office is in Jackson, Madison County, Tenn., and operating in several States of this United States for good will, peaceful relationship among the people and races that make up and constitute this g[illegible]

Nation; and the names of persons herein represent in an official capacity in this organization and represent thousands of persons connected therein.

II

Petitioners would show that bills have been introduced into Congress time and again in and out since 1916, and possibly prior thereto, on the subject and whose subject matter was laid down for the prevention of lynching; and would further show that both the Democrat and Republican Parties have introduced bills of this nature and it appears to the petitioners that these bills and this subject have been made a political football by both parties and the same at the expense of the taxpayers and the expense of human life and human misery and would show and appear to petitioners that neither party has been interested enough to pass a bill of this nature.

III

Petitioners would further show that the Negro people, persons of color of African descent, commonly known as Negroes or colored people, whose ancestors were brought to this our country in 1619, involuntarily and against their will, serving in slavery for a number of years and liberated by our great Government and who wrote them citizens under the law, and has endeavored to educate and christianize this race and group into a full-fledged American citizenship for which the petitioners are thankful; and would show that this group of people and citizens have responded to every call of emergency that our Government has made, and constitute some of the most loyal citizens of this great Government.

IV

Petitioners would further show that this group of citizens as herein mentioned have been subjected much more than any other citizens of this country to the crime of lynching. Lynching, as petitioners understand it, is one or more persons who conspire with themselves to take the laws into their own hands and to administer execution without due process of law and depriving or attempt to deprive the human being of his life without due process of law or to take from the officers of the law and from places of custody, jails, houses of correction, and other places of confinement where prisoners are being held, awaiting the day of trial where he shall be brought into a court of competent jurisdiction and be tried by a jury of his peers, freeholders of the State and householders of the county and the body, as herein mentioned, break open or burglarize the jail, and with authority of the custodian of said institution take the subject out and deprive him of his life without the sanction of law constituttes a lynching.

V

Petitioners would further show that thousands of their constituents have been carried to an untimely death by the method of execution and that the States—many of them—have not attempted to ameliorate this heinous crime and officers of the law and the sovereign States of America have not used the strong arm of the law and the extent of their authority to prevent this crime from being committed, and it appears in the light of all the circumstances that the sovereign States have compromised and condoned, upheld, and approved these lawless acts; and would show that this is mass murder and making criminals out of orderly communities and the blood stains of these victims shall be on their hands or on the hands of their children and would further show that the time has come that your petitioners now call upon the strong arm of the National Government, the greatest government in the world, with its far-reaching powers and authorities to take appropriate action in this matter, that the lives of its citizens might be protected and that lives of prisoners might be protected until they can be given a fair and impartial hearing in a tribunal of competent jurisdiction.

VI

Petitioners would further show that it has been charged that bills of this nature have been directed at our southern country, fully realizing and making a clear survey of the matters hereinabove set forth would show that these acts and the heinous crimes as herein mentioned have occurred in every part of the United States and the records will disclose the same; but would show that the death of

many of these bills from 1916 to the present moment have been opposed and laid at the doors of our southern representatives, but your petitioners do not believe that those representatives who opposed this piece of legislation would stand up and be counted in favor of a lynching in the States which they represent, but for political and sundry reasons have talked several of these bills to death and buried them in an untimely grave at the expense of the taxpayers of his State of which our group are a part, at the expense of the United States Government whose time is involved in any filibuster, at the expense of human misery and torture and the untimely death of many innocent people whose blood cries from the ground.

VII

Petitioners would further show and pray that every Senator and Representative in Congress will stand up and be counted either for lynching or against lynching and go on record in the Congressional Record to be for lynching or against it; too much criticism and reflection have been thrust at our southern country and the Nation at large on account of this crime and to remove this blot and stain from a great government as ours, which God has so ordained and set up to write the peace of the world; and for the protection of these loyal citizens true and tried, sterling in their nature, who can be trusted in every emergency that our Government has entered or will enter. We call upon every Senator and Representative unanimously to support this legislation as will appear in the Senate of the United States.

VIII

Petitioners would further show that invariably many organizations, abolition and nonabolition, some for the express purpose of bringing freedom to this underprivileged group herein mentioned, and others to intimidate and strike fear to the hearts of the same group and each claim to have a purpose of freedom and 100-percent Americanism and other groups come along to rule or ruin and many are charged to be communistic in their idealogy and under careful scrutiny by congressional investigating committees and set out to have subversive elements and tendencies, but would show that this organization has never been charged with being abolition or nonabolition; nor having communistic tendency or containing subversive elements, and would further show that no person having communistic ideas, tendencies, or otherwise can become a member of this organization.

PREMISES CONSIDERED

Petitioners pray the Judiciary Committee and Congress—

1. That this petition be accepted and filed with the Judiciary Committee considering this piece of legislation and become a part of their proceedings and that a copy of the petition be placed on the desk of each Senator when this bill is considered by the Senate.

2. That no Senator will take the responsibility of talking this piece of important legislation to death at the expense of the taxpayers of this Government and the State that he represents and at the expense of human misery and death.

3. That in the event of the anxiety and ambition of some Senators and Representatives who desire from a political reason to destroy this piece of legislation by talking it to death as prescribed by the rules of the Senate, that the cloture rule be invoked upon him and his case be referred to the people and voters of his State to be settled.

4. That petitioners be permitted to offer evidence before this honorable committee in the form of oral testimony or affidavits and be heard before said committee.

5. That they pray to the God who established this country of free religion, freedom of worship, freedom of speech, freedom of thought, freedom of action, for such other relief as they are entitled to.

Southern Association & Good Citizenship, Inc.: Rev. G. M. Banks, Supreme President; B. L. Estes, Supreme Secretary; Tennessee—J. H. Moten, President; Ruby Bailey, Secretary; Mississippi—R. L. Thomas, President; Atlee Crowe, Secretary; Arkansas—J. D. Daniels, President; Rev. E. L. Harris, Secretary; Indiana—Rev. E. Simmons, Teasley Biggins.

Legal department: L. P. Harden, Tennessee; B. A. Green, Mississippi; [illegible] Craig, Tennessee; W. S. Henry, Indiana, attorneys.

THE NATIONAL BOARD OF THE YOUNG WOMEN'S CHRISTIAN ASSOCIATIONS OF THE UNITED STATES OF AMERICA,
New York 22, N. Y., February 5, 1948.

Senator ALEXANDER WILEY,
Chairman, Senate Judiciary Committee,
United States Senate, Washington, D. C.

MY DEAR SENATOR WILEY: The Young Women's Christian Association includes in its membership all kinds of people. Many of its women and girls stem from the dominant ethnic and religious groups of the country. That is, most of them are native-born or second generation white people who are Protestants. Our most recent national reports show that, in addition, our membership of over 600,000 includes 10,000 foreign-born white people, 83,000 Negroes, 400 American Indians, and 5,000 Orientals.

These membership figures present only a small part of our total constituency. Within our thousands of volunteers and participants in Young Women's Christian Association service, education, and recreational programs throughout the country are thousands of other women and girls, and many of them are members of minority groups.

The concerns of these people are and must always be the concerns of the Young Women's Christian Association. Our interest in the bill to provide Federal protection against lynching and mob violence is a living, vital interest. It grows out of our knowledge of what is happening to people in the 435 communities throughout the country where we are at work. It roots in the daily lives of thousands of persons for whom and through whom we exist. It is motivated by our Christian purpose which will not let us rest so long as the spiritual welfare of any of our constituents is jeopardized by fear. We are concerned about all facets of a full, free, abundant life for every individual.

For many years our public affairs program has included a section on civil liberties and democratic rights which has given our national movement a charter to support proposals for the solution of our Nation's basic problems in human rights and to secure for Negroes and other minorities equal justice under law.

In March 1946, the Young Women's Christian Associations of this country met in national convention and reaffirmed our belief that the integrity of our democracy is tested by its treatment of minorities. We adopted a public affairs program that includes a section stating:

"Civil liberties are denied to millions of human beings in a world struggling to be free. Therefore we will work to support efforts to secure protection by Federal and State legislation against lynching and other forms of mob violence and work for equal enforcement of law as it applies to all groups in the population."

We call this to your attention now in connection with the bills your committee has under consideration (S. 42, S. 1465, S. 1352), because we are convinced that legislative sanction of antilynch policy is the surest safeguard to the personal freedom for which the United States of America traditionally has stood. We know what it means to have millions of our citizens live under threat of lynching and mob violence. We deplore the instances in which Americans have taken the law into their own hands, and, despite the statistical decrease in lynchings, the detrimental social climate yet embraces us all. We want to see law and order in a free society. We believe that the proposed legislation, S. 1352, without deletions or substitutions, is essential to provide law and order in a free society.

In addition to our desire for protection of each individual, we are anxious to see our democracy meet the challenge of our day. We realize that lynching is the high-water mark of the vigilante spirit. It sows the seeds for distrust and impatience with democratic process. In these days when democracy is under pressure in high places throughout the world, we must stamp out the intolerance of mob action wherever it makes its threat. Legislation against lynching will help us build the dynamic democracy which alone can withstand pressures from without.

In a civilized nation like ours, no accusation of crime can be so terrible as to justify punishment without legal proof of guilt. Our tradition of Anglo-Saxon justice that goes back to the Magna Carta holds the right of every man accused of a crime to a fair trial by his peers. In supporting the antilynch bills we seek to vindicate those practices which are the hallmark of any civilized government.

Our national program places considerable emphasis on social education. We try to educate our membership to the full meaning of democracy and Christianity. Throughout the country, we find it difficult to carry conviction with young people who are aware of the serious discriminations and violations of civil liberties within our American life. We know that sound education involves experience;

these cannot be divorced from each other. The opportunities we provide for people of all racial and economic groups to work together on common problems provide education for democratic living; they replace prejudice with understanding. The passage of Federal legislation against lynching would offer us and all other organizations a challenge for better interpretation of democratic values and a sound basis for providing experience as we help citizens learn to take their responsibility for living within the law. Indeed, the bills to stop lynching will help our country narrow the gap between our stated beliefs and actions, thus providing a setting for Americans to learn a basic principle of democracy.

As an international organization, the Young Women's Christian Association continues to work to help build a world of peace and justice. We realize that our country's contribution to a world order in which the administration of justice and the participation of all peoples must be on a basis of equality, depends upon what we accomplish in community relations at home. We know that the eyes of the world are upon us; our record of treatment of minorities falls far short of the standards of democracy. We are convinced that the bills to abolish lynching and mob violence in our national life move us toward the fulfillment of the obligations our Government has undertaken by the ratification of the United Nations Charter to promote "universal respect for and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language, and religion."

Sincerely yours,

CONSTANCE W. ANDERSON
Mrs. Arthur Forrest Anderson,
President.

The following statement on antilynching legislation was today submitted to the Senate Judiciary Committee by Robert Lathan, vice president of the Food, Tobacco, Agricultural, and Allied Workers Union, CIO:

"The Senate Judiciary Committee is once again considering passage of a Federal antilynching law. It is my duty to inform the Senators that the American people are tired of mere words and promises on this issue.

"It is now time for action, before our people come to the conclusion that neither of the major political parties means to carry out repeated campaign pledges to end this national shame.

"Our union, the Food, Tobacco, and Agricultural Workers, CIO, has repeatedly gone on record demanding a Federal antilynching law with teeth in it. We have so testified before this committee on at least half a dozen occasions. Each time our members have been disappointed as the Senate fails to act.

"Failure to pass a strong Federal antilynching law now, providing criminal penalties for violators, will be seen by our members as final proof that neither the Republican Party leaders in Congress nor the Democratic Party leaders in the administration mean what they say when they promise our people relief.

"Fine words in Presidential reports on civil rights and fine promises in campaign platforms will not save the lives of our people. Only action to punish lynchers and prevent future lynchings will."

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