CIVIL RIGHTS

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HEARINGS

BEFORE A

SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

EIGHTY-FIRST CONGRESS

FIRST SESSION

ON

S. 1725

A BILL TO PROVIDE MEANS OF FURTHER SECURING AND PROTECTING THE CIVIL RIGHTS OF PERSONS WITHIN THE JURISDICTION OF THE UNITED STATES

AND

S. 1734

A BILL TO ESTABLISH A COMMISSION ON CIVIL RIGHTS, AND FOR OTHER PURPOSES

JUNE 17, 22, 29, AND JULY 14, 1949

Printed for the use of the Committee on the Judiciary

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CIVIL RIGHTS

FRIDAY, JUNE 17, 1949

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

The subcommittee convened at 10 a. m., pursuant to call, in room 424, Senate Office Building, Senator J. Howard McGrath, chairman of the subcommittee, presiding.

Present: Senators McGrath (chairman of the subcommittee) and Wiley.

Also present: Robert B. Young, professional staff member.

Senator MCGRATH. This hearing will come to order.

This is a subcommittee hearing to consider two bills before the Senate Judiciary Committee, namely, S. 1725, introduced by Senator McGrath, and S. 1734, introduced by Senator Humphrey.

The title of the McGrath bill is "To provide means of further securing and protecting the civil rights of persons within the jurisdiction of the United States.

The title of the Humphrey bill, which is closely related, is "A bill to establish a Commission on Civil Rights and for other purposes."

(S. 1725 and S. 1734 are as follows:)

[S. 1725, 81st Cong., 1st sess.]

A BILL To provide means of further securing and protecting the civil rights of persons within the jurisdiction of the United States

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act, divided into titles and parts according to the following table of contents, may be cited as the "Civil Rights Act of 1949"

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SEC. 2. (a) The Congress hereby finds that, despite the continuing progress of our Nation with respect to protection of the rights of individuals, the civil rights of some persons within the jurisdiction of the United States are being denied, abridged, or threatened, and that such infringements upon the American principle of freedom and equality endanger our form of government and are destructive of the basic doctrine of the integrity and dignity of the individual upon which this Nation was founded and which distinguishes it from the totalitarian nations. The Congress recognizes that it is essential to the national security

and the general welfare that this gap between principle and practice be closed; and that more adequate protection of the civil rights of individuals must be provided to preserve our American heritage, halt the undermining of our constitutional guarantees, and prevent serious damage to our moral, social, economic, and political life, and to our international relations.

(b) The Congress therefore declares that it is its purpose to strengthen and secure the civil rights of the people of the United States under the Constitution, and that it is the national policy to protect the right of the individual to be free from discrimination based upon race, color, religion, or national origin.

(c) The Congress further declares that the succeeding provisions of this Act are necessary for the following purposes:

(i) To insure the more complete and full enjoyment by all persons of the rights, privileges, and immunities secured and protected by the Constitution of the United States, and to enforce the provisions of the Constitution.

(ii) To safeguard to the several States and Territories of the United States a republican form of government from the lawless conduct of persons threatening to destroy the several systems of public criminal justice and frustrate the functioning thereof through duly constituted officials.

(iii) To promote universal respect for, and observance of, human rights and fundamental freedoms for all, without distinction as to race or religion, in accordance with the undertaking of the United States under the United Nations Charter, and to further the national policy in that regard by securing to all persons under the jurisdiction of the United States effective recognition of certain of the rights and freedoms proclaimed by the General Assembly of the United Nations in the Universal Declaration of Human Rights.

(d) To the end that these policies may be effectively carried out by a positive program of Federal action the provisions of this Act are enacted.

SEC. 3. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby.

SEC. 4. There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

TITLE I—PROVISIONS TO STRENGTHEN THE FEDERAL GOVERNMENT MACHINERY FOR THE PROTECTION OF CIVIL RIGHTS

PART 1—ESTABLISHMENT OF A COMMISSION ON CIVIL RIGHTS IN THE EXECUTIVE BRANCH OF THE GOVERNMENT

SEC. 101. There is created in the executive branch of the Government a Commission on Civil Rights (hereinafter called the "Commission"). The Commission shall be composed of five members who shall be appointed by the President by and with the advice and consent of the Senate. The President shall designate one of the members of the Commission as Chairman and one as Vice Chairman. The Vice Chairman shall act as Chairman in the absence or disability of the Chairman, or in the event of a vacancy in that office. Any vacancy in the Commission shall not affect its powers and shall be filled in the same manner in which the original appointment was made. Three members of the Commission shall constitute a quorum. Each member of the Commission shall receive the sum of $50 per day for each day spent in the work of the Commission, together with actual and necessary traveling and subsistence expenses incurred while engaged in the work of the Commission (or, in lieu of subsistence, a per diem allowance at a rate not in excess of $10).

SEC. 102. It shall be the duty and function of the Commission to gather timely and authoritative information concerning social and legal developments affecting the civil rights of individuals under the Constitution and laws of the United States; to appraise the policies, practices, and enforcement program of the Federal Government with respect to civil rights; and to appraise the activities of the Federal, State and local governments, and the activities of private individuals and groups, with a view to determining what activities adversely affect civil rights. The Commission shall make an annual report to the President on its findings and recommendations, and it may in addition from time to time, as it deems appropriate or at the request of the President, advise the President of its findings and recommendations with respect to any civil rights matter.

SEC. 103. (a) The Commission may constitute such advisory committees and may consult with such representatives of State and local governments, and

private organizations, as it deems advisable. The Commission shall, to the fullest extent possible, utilize the services, facilities, and information of other Government agencies, as well as private research agencies, in the performance of its functions. All Federal agencies are directed to cooperate fully with the Commission to the end that it may effectively carry out its functions and duties.

(b) The Commission shall have authority to accept and utilize services of voluntary and uncompensated personnel and to pay any such personnel actual and necessary traveling and subsistence expenses incurred while engaged in the work of the Commission (or, in lieu of subsistence, a per diem allowance at a rate not in excess of $10).

(c) Within the limitations of its appropriations, the Commission is authorized to appoint a full time staff director and such other personnel, to secure such printing and binding, and to make such expenditures as, in its discretion, it deems necessary and advisable.

PART 2. REORGANIZATION OF CIVIL RIGHTS ACTIVITIES OF THE DEPARTMENT OF JUSTICE

SEC. 111. There shall be in the Department of Justice an additional Assistant Attorney General, learned in the law, who shall be appointed by the President, by and with the advice and consent of the Senate, and shall, under the direction of the Attorney General, be in charge of a Civil Rights Division of the Department of Justice concerned with all matters pertaining to the preservation and enforcement of civil rights secured by the Constitution and laws of the United States.

SEC. 112. The personnel of the Federal Bureau of Investigation of the Department of Justice shall be increased to the extent necessary to carry out effectively the duties of such Bureau with respect to the investigation of civil rights cases under applicable Federal law. Such Bureau shall include in the training of its agents appropriate training and instructions, to be approved by the Attorney General, in the investigation of civil rights cases.

PART 3. CREATION OF A JOINT CONGRESSIONAL COMMITTEE ON CIVIL RIGHTS

SEC. 121. There is established a Joint Committee on Civil Rights (hereinafter called the "joint committee"), to be composed of seven members of the Senate, to be appointed by the President of the Senate, and seven members of the House of Representatives to be appointed by the Speaker of the House of Representatives. The party representation on the joint committee shall as nearly as may be feasible reflect the relative membership of the majority and minority parties in the Senate and House of Representatives.

SEC. 122. It shall be the function of the joint committee to make a continuing study of matters relating to civil rights, including the rights, privileges, and immunities secured and protected by the Constitution and laws of the United States; to study means of improving respect for and enforcement of civil rights; and to advise with the several committees of the Congress dealing with legislation relating to civil rights.

SEC. 123. Vacancies in the membership of the joint committee shall not affect the power of the remaining members to execute the functions of the joint committee and shall be filled in the same manner as in the case of the original selection. The joint committee shall select a chairman and a vice chairman from among its members.

SEC. 124. The joint committee, or any duly authorized subcommittee thereof, is authorized to hold such hearings, to sit and act at such places and times, to require, by subpena, or otherwise, the attendance of such witnesses and the production of such books, papers, and documents, to administer such oaths, and to take such testimony, as it deems advisable. The provisions of sections 102 to 104, inclusive, of the Revised Statutes, as amended (2 U. S. C. 192, 193, 194), shall apply in case of any failure of any witness to comply with a subpena or to testify when summoned under authority of this section. Within the limitations of its appropriations, the joint committee is empowered to appoint and fix the compensation of such experts, consultants, technicians, and clerical and stenographic assistance, to procure such printing and binding, and to make such expenditures as, in its discretion, it deems necessary and advisable. The cost of stenographic services to report hearings of the joint committee, or any subcommittee thereof, shall not exceed 25 cents per hundred words.

SEC. 125. Funds appropriated to the joint committee shall be disbursed by the Secretary of the Senate on vouchers signed by the chairman and vice chairman.

SEC. 126. The joint committee may constitute such advisory committees and may consult with such representatives of State and local governments and private organizations as it deems advisable.

TITLE II—PROVISIONS TO STRENGTHEN PROTECTION OF THE INDIVIDUAL'S RIGHTS TO LIBERTY, SECURITY, CITIZENSHIP AND ITS PRIVILEGES

PART 1—AMENDMENTS AND SUPPLEMENTS TO EXISTING CIVIL RIGHTS STATUTES

SEC. 201. Title 18, United States Code, section 241, is amended to read as follows:

"SEC. 241. (a) If two or more persons conspire to injure, oppress, threaten, or intimidate any inhabitant of any State, Territory, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or if two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured they shall be fined not more than $5,000 or imprisoned not more than ten years, or both.

"(b) If any person injures, oppresses, threatens, or intimidates any inhabitant of any State, Territory, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or if any person goes in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured such person shall be fined not more than $1,000 or imprisoned not more than one year, or both; or shall be fined not more than $10,000 or imprisoned not more than twenty years, or both, if the injury or other wrongful conduct herein shall cause the death or maiming of the person so injured or wronged.

"(c) Any person or persons violating the provisions of subsections (a) and (b) of this section shall be subject to suit by the party injured, or by his estate, in an action at law, suit in equity, or other proper proceeding for damages or preventive or declaratory or other relief. The district courts, concurrently with State and territorial courts, shall have jurisdiction of all proceedings under this subsection without regard to the sum or value of the matter in controversy. The term 'district courts' includes any district court of the United States as constituted by chapter 5 of title 28, United States Code (28 U. S. C. 81 et seq.), and the United States court of any territory or other place subject to the jurisdiction of the United States."

SEC. 202. Title 18, United States Code, section 242, is amended to read as follows:

"SEC. 242. Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects, or causes to be subjected, any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution and laws of the United States, or to different punishments, pains, or penalties on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000 or imprisoned not more than one year, or both; or shall be fined not more than $10,000 or imprisoned not more than twenty years, or both, if the deprivation, different punishment or other wrongful conduct herein shall cause the death or maiming of the person so injured or wronged."

SEC. 203. Title 18, United States Code, is amended by adding after section 242 thereof the following new section:

SEC. 242A. The rights, privileges, and immunities referred to in title 18, United States Code, section 242, shall be deemed to include, but shall not be limited to, the following:

"(1) The right to be immune from exactions of fines, or deprivations of property, without due process of law.

"(2) The right to be immune from punishment for crime or alleged criminal offenses except after a fair trial and upon conviction and sentence pursuant to due process of law.

"(3) The right to be immune from physical violence applied to exact testimony or to compel confession of crime or alleged offenses.

"(4) The right to be free of illegal restraint of the person.

"(5) The right to protection of persons and property without discrimination by reason of race, color, religion, or national origin.

"(6) The right to vote as protected by Federal law."

SEC. 304. Title 18, United States Code, section 1583, is amended to read as follows:

"SEC. 1583. Whoever holds or kidnaps or carries away any other person, with the intent that such other person be held in or sold into involuntary servitude, or held as a slave; or whoever entices, persuades, or induces any other person to go on board any vessel or other means of transportation or to any other place within or beyond the United States with the intent that he may be made a slave or held in involuntary servitude shall be fined not more than $5,000, or imprisoned not more than five years, or both."

PART 2 PROTECTION OF RIGHT TO POLITICAL PARTICIPATION

SEC. 211. Title 18, United States Code, section 594, is amended to read as follows:

"SEC. 594. Whoever intimidates, threatens, coerces, or attempts to intimidate, threaten, or coerce, any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, Presidential elector, Member of the Senate, or Member of the House of Representatives, Delegates or Commissioners from the Territories and possessions, at any general, special, or primary election held solely or in part for the purpose of selecting or electing such candidate, shall be fined not more than $1,000 or imprisoned not more than one year, or both."

SEC. 212. Section 2004 of the Revised Statutes (8 U. S. C. 31) is amended to read as follows:

"All citizens of the United States who are otherwise eligible by law shall be entitled to and allowed the same and equal opportunity to qualify to vote and to vote at any general, special, or primary election by the people conducted in or by any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, without distinction, direct or indirect, based on race, color, religion, or national origin; any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding. The right to qualify to vote and to vote, as set forth herein, shall be deemed a right within the meaning of, and protected by, the provisions of title 18, United States Code, section 242, as amended, section 1979 of the Revised Statutes (8 U. S. C. 43), and other applicable provisions of law."

SEC. 213. In addition to the criminal penalties provided, any person or persons violating the provisions of section 211 of this part shall be subject to suit by the party injured, or by his estate, in an action at law, suit in equity, or other proper proceeding for damages or preventive or declaratory or other relief. The provisions of sections 211 and 212 of this part shall also be enforceable by the Attorney General in suits in the district courts for preventive or declaratory or other relief. The district courts, concurrently with State and Territorial courts, shall have jurisdiction of all other proceedings under this section without regard to the sum or value of the matter in controversy. The term "district courts" includes any district court of the United States as constituted by chapter 5 of title 28, United States Code (28 U. S. C. 81 et seq.), and the United States court of any Territory or other place subject to the jurisdiction of the United States.

PART 3 PROHIBITION AGAINST DISCRIMINATION OR SEGREGATION IN INTERSTATE TRANSPORTATION

SEC. 221. (a) All persons traveling within the jurisdiction of the United States shall be entitled to the full and equal enjoyment of the accommodations, advantages, and privileges of any public conveyance operated by a common carrier engaged in interstate or foreign commerce, and all the facilities furnished or connected therewith, subject only to conditions and limitations applicable alike to all persons, without discrimination or segregation based on race, color, religion, or national origin.

(b) Whoever, whether acting in a private, public, or official capacity, denies or attempts to deny to any person traveling within the jurisdiction of the United States the full and equal enjoyment of any accommodation, advantage, or privilege of a public conveyance operated by a common carrier engaged in interstate or foreign commerce, except for reasons applicable alike to all persons of every race, color, religion, or national origin, or whoever incites or otherwise participates in such denial or attempt, shall be guilty of a misdemeanor and shall, upon conviction, be subject to a fine of not to exceed $1,000 for each offense, and shall also be subject to suit by the injured person or by his estate, in an action at law, suit in equity, or other proper proceeding for damages or preventive or declaratory or other relief. Such suit or proceeding may be brought in any district court of the United States as constituted by chapter 5 of title 28, United States Code (28 U. S. C. 81 et seq.) or the United States court of any Territory or other place subject to the jurisdiction of the United States, without regard to the sum or value of the matter in controversy, or in any State or Territorial court of competent jurisdiction.

SEC. 222. It shall be unlawful for any common carrier engaged in interstate or foreign commerce, or any officer, agent, or employee thereof, to segregate or attempt to segregate, or otherwise discriminate against passengers using any public conveyance or facility of such carrier engaged in interstate or foreign commerce, on account of the race, color, religion, or national origin of such passengers. Any such carrier or officer, agent or employee thereof who segregates or attempts to segregate such passengers or otherwise discriminate against them on account of race, color, religion, or national origin shall be guilty of a misdemeanor and shall, upon conviction, be subject to a fine of not to exceed $1,000 for each offense, and shall also be subject to suit by the injured person in an action at law, suit in equity, or other proper proceeding for damages or preventive or declaratory or other relief. Such suit or proceeding may be brought in any district court of the United States as constituted by chapter 5 of title 28, United States Code (28 U. S. C. 81 et seq.), or the United States court of any Territory or other place subject to the jurisdiction of the United States, without regard to the sum or value of the matter in controversy, or in any State or Territorial court of competent jurisdiction.

[S. 1734, 81st Cong., 1st sess.]

A BILL To establish a Commission on Civil Rights, 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 DECLARATION OF POLICY

SECTION 1. The Congress finds that our many freedoms have contributed in large measure to the rapid growth, the productivity and ingenuity which characterize this Nation; that democracy, by its nature, opens its press and platforms to those who would destroy it; that even today we must maintain a continual watch against the forces of totalitarianism, both from the right and the left, and that we must be accurately and continuously informed concerning the extent to which fundamental rights are abridged or denied.

It is hereby declared to be the policy of the United States to protect all rights now freely enjoyed, to make our practices with reference to civil rights comply with existing statutes, and to enlarge the area of our freedoms.

SEC. 2. For the purpose of securing the enforcement of civil rights for all, there is created a commission to be known as the Commission on Civil Rights, which shall consist of three members appointed by the President, by and with the advice and consent of the Senate, who shall serve for a term of four years, except that the terms of the members originally appointed shall expire seriatim at intervals of one year. Each member of the Commission shall receive a salary of _____ a year, shall be eligible for reappointment, and shall not engage in other business, vocation, or employment.

SEC. 3. The Commission shall have power to appoint and fix the compensation of such personnel as it deems advisable, in accordance with the provisions of the civil-service laws and the Classification Act of 1923, as amended.

SEC. 4. The principal office of the Commission shall be in the District of Columbia, but it may meet and exercise all its powers at any other place it may

designate. The Commission may, by one or more of its members or by such agencies as it may designate, prosecute any inquiry or conduct any hearing necessary to its functions in any part of the United States or any Territory or insular possession thereof.

SEC. 5. The Commission shall have the power: (1) To conduct such studies, investigations, and research as it deems necessary to enable it effectively to prevent abridgment or denial of civil rights; (2) to investigate the present organization and methods of operation of all departments, bureaus, agencies, boards, commissions, offices, independent establishments, and instrumentalities of the executive branch of the Government, to determine what changes are necessary to prevent abridgment or denial of civil rights therein; (3) to assist States, counties, municipalities, and private agencies in conducting studies to prevent the abridgment or denial of civil rights; (4) to conduct a hearing, any time not less than 10 days after published notice thereof, whenever a written complaint supported by probable evidence alleges that civil rights are being denied or abridged; and (5) to recommend to Congress legislation necessary to safeguard our civil rights.

SEC. 6. (a) The Commission, or the duly designated agency, in the conduct of the procedures provided for in section 5, shall have power to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under study or investigation. Any member of the Commission, or of the agency designated by the Commission for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

(b) In case of contumacy or refusal to obey a subpena issued to any person, any district court of the United States or the United States court of any Territory or possession, or the District Court of the United States for the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Commission shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission, its members, or the designated agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(c) No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpena of the Commission, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or provide evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

SEC. 7. Any person who shall willfully resist, prevent, impede, or interfere with any member of the Commission or any of its referees, agents, or agencies, in the performance of duties pursuant to this Act, shall be punished by a fine of not more than $5,000 or by imprisonment for not more than one year, or both.

SEC. 8. The Commission shall at the close of each fiscal year make a report in writing to the Congress and to the President concerning the investigations it has conducted, the means of alleviating discrimination, and recommendations for legislation as may appear desirable to prevent denial or abridgement of civil rights.

SEC. 9. There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, so much as may be necessary to carry out the provision of this Act.

Senator MCGRATH. Witnesses may address themselves to either or both of the bills during the course of their testimony.

Members of this subcommittee are Senators McGrath, Eastland, and Wiley; present are Senators Wiley and McGrath.

It was my intention to make an extended statement in connection with the provisions of S. 1725, but inasmuch as we have witnesses to testify, we will proceed first to hear those witnesses.

The Right Reverend Maurice S. Sheehy, Department of Religious Education, the Catholic University of America, is appearing for the National Citizens' Council on Civil Rights.

Monsignor Sheehy, do you want to take a chair?

STATEMENT OF RT. REV. MAURICE S. SHEEHY, DEPARTMENT OF RELIGIOUS EDUCATION, THE CATHOLIC UNIVERSITY OF AMERICA, ON BEHALF OF THE NATIONAL CITIZENS COUNCIL ON CIVIL RIGHTS

Monsignor SHEEHY. Gentlemen, I appreciate the opportunity afforded me to testify in behalf of the National Citizens' Council on Civil Rights. I am going to follow rather closely the text that has been submitted to you inasmuch as I am authorized by this council to make this representation for them.

Senator MCGRATH. Would you like to state for the record something about the council, what it represents?

Monsignor SHEEHY. The National Citizens' Council on Civil Rights is a federation of various organizations which have been proposed in support of the ideal of civil rights. I have here, Mr. Chairman, a list of the officers and members of the National Citizens' Council on Civil Rights, which I shall be glad to insert in the record.

Senator MCGRATH. It may be incorporated in the record at this point.

(The list is as follows:)

NATIONAL CITIZENS' COUNCIL ON CIVIL RIGHTS

OFFICERS

W. W. Waymack, chairman
Dr. Ernest O. Melby, vice chairman
Mrs. Ruth Bryan Rohde, vice chairman
Herbert Bayard Swope, vice chairman
Leo M. Cherne, treasurer

MEMBERS

Dr. Henry A. Atkinson
William L. Batt
William Rose Benet
Irving Berlin
Charles C. Burlingham
James B. Carey
Dr. Harry J. Carman
Dr. Harry Wodburn Chase
Norman Cousins
Gardner Cowles
Morris L. Ernst
George Field
Thomas K. Finletter
Rev. George B. Ford
Dr. Harry Emerson Fosdick
Dr. Harry D. Gideonse
Nathaniel L. Goldstein
William Green
Mrs. Elinore M. Herrick
Rt. Rev. Henry W. Hobson
Hubert H. Humphrey
Eric Johnston
Albert D. Lasker
Herbert H. Lehman
Tex McCrary
Edward McGrady
Dr. William C. Menninger
Newbold Morris
Edgar Ansel Mowrer
Leo Nejelski
Rt. Rev. G. Bromley Oxnam
Robert P. Patterson
Judge Joseph M. Proskauer
Mrs. Kermit Roosevelt
Oren Root, Jr.
Elmo Roper
Mrs. Anna M. Rosenberg
Rabbi Wm. F. Rosenblum
Rt. Rev. Maurice S. Sheehy
Dr. George N. Shuster
Frank Stanton
Justice Meier Steinbrink
Gerard Swope
Alfred Gwynne Vanderbilt
Dr. Henry P. Van Dusen
Walter White
John Hay Whitney

Monsignor SHEEHY. I would like to present a statement that was drawn up by the council some months ago.

Senator MCGRATH. That will be made a part of the record also. Do you want to tell us something about your organization?

(The statement is as follows:)

A FEDERAL COMMISSION ON CIVIL RIGHTS

PREAMBLE

From the very beginning our country has symbolized the free way of life. Throughout the world people look to us as the guardians of this heritage of civilized man. Today our position of world leadership rests as much on our ability to furnish sound moral guidance as on the wealth of our fields, mines, and factories. That we have maintained this leadership is a great tribute.

At home, our many freedoms have contributed in large measure to the rapid growth, the productivity and ingenuity which characterize this Nation. Our buildings and bridges are as much monuments to the free spirit as are our cathedrals and town halls.

The struggle for these rights, which have rewarded us so richly, has not been an easy one. Even today we must maintain a continual watch against the forces of totalitarianism, both from the right and the left. Democracy, by its nature, opens its press and platforms to those who would destroy it. We must therefore strengthen our institutions to meet this challenge.

It is not enough, however, to protect rights now freely enjoyed, if we are to retain leadership and to progress toward a fuller realization of democratic values. Those who oppose us make capital of the gap between our ideals and our everyday practices. Our weaknesses are made the subject of propaganda jibes. Our word carries less weight when the charge of hypocrisy can be leveled against us.

Moreover, to the extent that we are ignorant of our own shortcomings, or close our eyes to them, we nurture disease and eventual decay, for a free country cannot remain static. It must be our choice to make our practices comply with existing statutes and to enlarge the area of our freedoms.

So that democracy may thrive, we must be accurately and continuously informed concerning the extent to which fundamental rights are abridged or denied. To this end we must establish within the executive branch of the Federal Government a permanent Commission on Civil Rights, with effective means of investigating and reporting its findings. An informed citizenry will then serve as the guardian of its own liberty.

The establishment of such a Commission, however, will not of itself guarantee our freedoms. A new body of law, affecting such areas as employment, education and suffrage, must be enacted. The protection of life and property against mob rule must also receive legislative approval. The work of the Commission will pave the way for action by appropriate law enforcement agencies. To insure effective action, these law enforcement agencies must be adequately staffed. As a first step in this direction, the Civil Rights Section of the Department of Justice should be raised in status to a Division of the Department, headed by the Assistant Attorney General.

Within this larger framework, the Commission should devote itself to the following objectives:

FUNCTIONS

1. A permanent Federal Commission on Civil Rights should be a fact-finding agency concerned with the status of civil rights

The Commission should examine alleged denials or curtailments of these rights and hold public hearings when necessary. In addition, it should compile information regarding existing legislation and public policy in this field, and make it generally available. Studies conducted by the Commission may be initiated on its own motion or as a result of complaints or inquiries. The results of such continuous study should be published by the Government and made available to the public.

2. The Commission should be ready to aid in the prevention of conflicts and in the solution of problems involving civil rights

Occasionally there develop problems of such magnitude as to threaten our democratic pattern. The Commission should make itself available to assist in the prevention of such conflicts and should offer appropriate guidance.

3. The Commission should be prepared to offer recommendations for the improvement of civil-rights practices

In the course of its investigations, the Commission may receive requests from interested individuals and agencies regarding more effective procedures for the

safeguarding of civil rights. In such cases, the Commission should, to the extent possible, give any necessary advice, based on its special experience and broad knowledge.

4. The Commission should call attention to emerging civil-rights problems on the national and international level.

Abridgements of civil rights in the United States are no longer of purely domestic concern. International attention is focused on any evidence of inconsistency between our protestation and our practice. Our membership in the United Nations and particularly the recent adoption of the United Nations Declaration of Human Rights present us with new responsibilities. As model and leader for the democracies of the world, we must be constantly alert to undemocratic practices in our midst. The Commission should inform the American people of the international implications of our practices here at home, and of our obligations as a member of the United Nations.

5. The Commission should consult with State, local, and private agencies working in the area of civil rights and should, when requested, offer assistance to such agencies

In order to maximize its efficiency and insure economy in its operation, the Commission should, where possible, utilize the resources and facilities of State, local, and private agencies working in the area of civil rights. In addition, the Commission might cooperate with these agencies by offering them, in turn, advice and assistance on civil-rights problems.

6. The Commission should seek to improve the civil-rights practices of governmental agencies by studying and reporting on these practices

Previous examinations have demonstrated that some administrative agencies under the jurisdiction of the Federal Government have failed to recognize their civil-rights obligations. A permanent Commission on Civil Rights could aid in an examination of these practices and, in addition, could furnish guidance toward possible improvements.

7. The Commission should make reports to the President of the United States

The Commission should be an instrument of the Executive Office. It should inform the President not only of its own activities but also of the status of civil rights in this country. Such information should be embodied in reports to the President to be made at regular intervals as well as on any occasion the Commission or the President deemed appropriate.

POWERS OF THE COMMISSION

In pursuance of its functions the Commission should have the power to investigate, subpena witnesses, take testimony and hold public hearings. The Commission should receive cooperation from other governmental agencies. The Commission should call to the attention of the Attorney General alleged violations of Federal civil rights. The Commission's geographical jurisdiction should include the United States and its possessions.

In order to function effectively, any investigative body must have the power to subpena witnesses and take testimony under oath, to record such testimony and to hold public hearings. These are minimum prerequisites. Furthermore, any such Commission must be empowered to utilize services which can be provided by other governmental agencies.

It has been previously stated that, on occasion, the Commission might, in its investigations, uncover apparent violations of Federal laws protecting civil rights. In such cases, the Commission should have authority to call the alleged violations to the attention of the Attorney General, so that he, in turn, might take action to see that the law is properly enforced.

ORGANIZATION

The Commission should be directed by full-time Commissioners

We believe that the Commission could best meet its responsibilities if it were directed by full-time Commissioners, preferably three in number, who had demonstrated their ability to perform the required services. The Commission should be adequately staffed in national as well as regional offices. This type of organization is to be preferred over one dependent upon prominent part-time or voluntary Commissioners, who could not provide the continuous leadership necessary for the operation of an effective agency.

(Submitted by the National Citizens' Council on Civil Rights, Willkie Memorial Building, 20 West Fortieth Street, New York City)

Drafting committee.—Herbert Bayard Swope, chairman; Robert Carr, Dartmouth College; Robert Cushman and Milton Konvitz of Cornell University; Mrs. Sadie Alexander, Channing Tobias, and Morris Ernst, members of the President's Committee on Civil Rights; Dean Ernest O. Melby, New York University; Louis Wirth, University of Chicago; Mrs. Ruth Bryan Rohde, former Minister to Denmark; Leo M. Cherne, Research Institute of America; Irving M. Engel, American Jewish Committee; Benjamin R. Epstein, Anti-Defamation League of B'nai B'rith; George Field, Freedom House; Thurgood Marshall, National Association for the Advancement of Colored People; Roger N. Baldwin, American Civil Liberties Union.

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Monsignor SHEEHY. I am head of the Department of Religious Education at the Catholic University of America. I have been interested in problems of civil right for many years. Because of my interest in problems of civil rights, I served for 5 years in the Navy, and I feel in defending these ideals which we are suggesting on both the bills which you have mentioned that we are defending the things for which our young men fought during the recent World War.

Senator MCGRATH. What was your rank in the Navy?

Monsignor SHEEHY. Captain in the Chaplains Corps, Naval Reserve.

I deeply appreciate the opportunity afforded to me to testify before you on behalf of the National Citizens' Council on Civil Rights.

The principles embodied in the bills S. 1725 and S. 1734 are strongly supported by the members of our council. The provisions under title II of S. 1725 to amend and supplement existing civil-rights statutes, to protect the citizen's franchise and to prohibit discrimination in interstate transportation are essential implementations of our Bill of Rights and Constitution. To insure adequate enforcement of these provisions, the Civil Rights Section of the Department of Justice must be raised in status to a Division of the Department, properly

staffed and headed by an Assistant Attorney General, as provided in part 3, title I of S. 1725.

The council has also publicly affirmed its support for the creation of a joint congressional Committee on Civil Rights, as provided in part 3, title I of S. 1725. On this point, I should like to call attention to the fact that Congress has used its investigatory powers very effectively in the past in many areas of our democratic interest. Destructive forces which undermine our national welfare have been brought to light. Important as these areas of congressional study have been, none is more important than the protection of the civil rights of American citizens.

We appreciate the importance of all provisions in the bills now being considered by this committee as being necessary parts to a well-integrated program. It is our special study of the need for a permanent Federal Commission on Civil Rights which causes us now to place emphasis on this subject.

On December 15 of last year our council called together a group of experts in the fields of law, public administration, and civil rights for a series of deliberations on the subject of a permanent Federal Commission on Civil Rights. Those who were appointed to draft the conclusions of the conference included the following: Herbert Bayard Swope, chairman of conference; Robert K. Carr, Dartmouth College. Robert E. Cushman, Cornell University. Milton Konvitz, Cornell University.

Mrs. Sadie T. Alexander, President's Committee on Civil Rights.

Channing Tobias, President's Committee on Civil Rights. Morris L. Ernst, President's Committee on Civil Rights. Ernest O. Melby, New York University. Louis Wirth, University of Chicago. Mrs. Ruth Bryan Rohde, former Minister to Denmark. Leo M. Cherne, Research Institute of America. Irving M. Engel, American Jewish Committee. Benjamin R. Epstein, Anti-Defamation League of B'nai B'rith.

George Field, Freedom House.

Thurgood Marshall, National Association for the Advancement of Colored People.

Roger N. Baldwin, American Civil Liberties Union.

The testimony I present you is based on the wisdom of this group and carries the support of the members of our council, whose names I have already presented.

It is our firm belief that not only America's internal strength but her influence abroad rest in large measure upon the vitality of our free institutions. The forces affecting the world today, to which these free institutions are inevitably linked, do not allow us the luxury of a laissez-faire approach to the safeguarding of our rights. We believe the United States must establish now a Commission on Civil Rights in the executive branch of the Federal Government to maintain a continuous examination and report on its findings. An informed citizenry will then serve as the guardian of its own liberties.

Let me speak first of the results of such an effort on American foreign relations as we see it.

We know two-thirds of the world's population is non-Caucasian. We make military and political agreements with these people; we do business with them. Our position on the international round table is greatly weakened when the charge of hypocrisy can be leveled against us. As more and more peoples inhabiting backward areas of the world

win their freedom, this problem will become increasingly acute. Propaganda emphasizing American weaknesses in civil rights may help to spell the difference on some occasions between new nations aligning themselves with the Soviet system or the American way of life. Moreover, with new sources of energy constantly being revealed in our scientific laboratories, no one can judge properly what nations may in the coming few years develop into newer and greater world powers. We have no choice but to establish the friendliest possible relations with the freedom-loving peoples of the world. This can best be performed by demonstrating through such action as establishing a Commission on Civil Rights that America means to narrow the gap between her professions and her practices and that she can be counted upon to perform by deed what she expresses by word.

Every lynching, every riot, every racial or religious disturbance has fed the Communist machine, operating in this country as abroad, with new material to exaggerate and broadcast to the world.

If I may digress, in 1950, at the request of the State Department, Archbishop James Ryan and I visited the various countries in South America. We found at that time that our country was under constant attack from Nazi propaganda sources, and they were then doing what the Communists are doing today. They were magnifying every little incident which might be considered a transgression of civil liberties and using that for propaganda tactics.

With the recently expressed official Soviet anti-Semitism still fresh in the minds of people, we have a further opportunity to win a major battle in the war of ideas. What better answer than in the face of Soviet misdeeds, to set up an official agency of our Government charged with keeping a free people informed on the status of its own rights?

The record is clear. When we rob the Communists of their own best weapon by taking action on human rights ourselves, their position is immeasurably weakened. The report of the President's Committee on Civil Rights, for example, met with indifference, I might say was ignored, from the Communist press here and abroad. In recent years human rights have become identified with major political parties in this country, and the United States has subscribed to the United Nations Declaration of Human Rights. As a result, the Communists have abandoned their usual noisy and highly organized campaign for civil rights. These illustrations, more clearly than any theory, prove once again that America's best offense in the ideological war is the positive demonstration that through our free institutions we are cleaning our own house.

The establishment of a Commission on Civil Rights will be equally rewarding in its effect on the home front.

We believe democracy thrives on free expression and is best able to move forward when all aspects of questions are freely aired. All of us know that our enemies within abuse this freedom for the purpose of destroying democracy itself. To the extent that we are ignorant of these threats or close our eyes to our own shortcomings, we are nurturing disease and eventual decay. Democracy never stands still; it can strengthen itself or it can fall back in lethargy. It must be our choice to keep our way of life vital and growing. A Commission on Civil Rights would, as a primary function, continuously alert the

American people to the challenges against human liberty from the extremist groups both within and without our midst.

It is not implied that such a commission would have policing powers or the right to certify or sanction. We believe these are not properly the duties of such a commission but rest with the Department of Justice and with American public opinion. We do believe, however, such a commission should have full powers to investigate and report its findings. In order to perform its task effectively, the Commission should have the right to hold hearings and subpena witnesses, as proposed in S. 1734. Without this, information made available by the Commission would necessarily be based on incomplete evidence.

It is the belief of our council that, whereas the powers of the Commission should be limited, its scope should be broad enough to encompass any activity in the area of civil rights of sufficient magnitude to threaten our democratic pattern. The Commission cannot be directed to concern itself with every violation of civil rights. If, however, a specific violation becomes multiplied under a particular set of circumstances or in a particular area to the extent that it threatens our democratic pattern, then an investigation into this type of violation might be a task of the Commission. By the same token, if a single violation, through the Nation-wide attention drawn to it, tends to influence other persons to commit a similar violation, then an examination of this case might also be deemed appropriate by the Commission. In all events the Commission should be free to examine any situation which might affect our national behavior or create abroad a false view of our institutions.

The rapid growth and enormous complexities of the American way of life have made it necessary to establish central bodies of information on many diverse facets of our activity. It is our belief that a continuing compilation of information must now be established concerning our greatest heritage of all, human liberty.

At the invitation of President Truman, a special committee of our council visited the White House on January 12 to present our report on a permanent Federal Commission on Civil Rights. I have given to the chairman a copy of that report. Attending this meeting with the President were Robert P. Patterson, Herbert Bayard Swope, Edward McGrady, Leo M. Cherne, Morris L. Ernst, George Field, and Maurice S. Sheehy. I am pleased to submit our report for the attention of this subcommittee, and have submitted a list of the members of the National Citizens' Council on Civil Rights, in whose name I have spoken.

Senator McGrath. Thank you very much. Are there any questions?

Senator Wiley. Yes. Monsignor, I take it that you have gone through this bill S. 1725.

Monsignor Sheehy. Yes, sir.

Senator Wiley. And I think it would be very helpful if you would give a brief summation of what this bill does and how it would accomplish the objective that you have testified about.

Monsignor Sheehy. Senator, it seems to me that the virtue of this bill is that it comprises under seven different headings the main points which have been brought up in regard to the civil rights. In other

words, if the author of the bill is not offended by it, I think it is more or less an omnibus bill.

Senator WILEY. You do not want to be afraid of one Irishman offending another one.

Monsignor SHEEHY. I am not particularly afraid of that. I find, by the way, in answer to your question, I happen to have cut out an editorial from the Washington Post of May 10, 1949, which summarizes my own opinion as well as the opinion of the Washington Post in regard to the merits of this bill.

Senator WILEY. Do you always agree with their editorials?

Monsignor SHEEHY. No, sir; I do not. Occasionally they attack the Navy; and, of course, I cannot agree and go along with them on those attacks. But I must say, in regard to their stand on civil rights, I am 100 percent back of the editorial stand which this paper has consistently taken over the years. And it happens that, in reviewing this matter during the past few days, I came across this editorial under the heading of "A start in civil rights," and I am going to leave it with the chairman of your committee. It summarizes perhaps better than I could the particular advantages of the bill.

Senator MCGRATH. It will be made a part of the record at this point.

(The editorial is as follows:)

[From the Washington Post, May 10, 1949]

A START IN CIVIL RIGHTS

To date, administration and Congress have manifested a positive genius for running into the old futile controversies on civil rights. The House is giving preference to anti-poll-tax and fair employment practices bills; a Senate group is putting forth a mild antilynching bill; and there is danger that the fundamental and most manageable of the civil-rights measures may be crowded out by these old perennials. The measure to which we refer is S. 1725, introduced by Senator McGrath.

One reason for this unsatisfactory situation is undoubtedly the delay in getting the McGrath bill before the Senate. It was introduced only 2 weeks ago. Considering the legislative jog jam already bedevilling the Senate, that does not give the bill a very good chance in the present session. Yet it seems to us that this bill is the natural and logical spearhead of the President's civil-rights program.

In S. 1725 Senator McGrath has combined seven elementary steps that ought to be taken to minimize discrimination in those areas where the Federal Government has special responsibilities. It would set up a Civil Rights Commission of five members to reflect the conscience of the Nation in the matter of civil liberties. The Commission's work would be supplemented by a Joint Congressional Committee on Civil Rights that would be in a position to investigate discriminatory practices as well as to recommend legislation. We think the latter task could be more appropriately assigned, however, to the House and Senate Judiciary Committees with a change of name to include the civil-rights function.

Having thus laid the ground work for future progress, the bill strikes at the foundation of many present abuses. It would give statutory backing to the Civil Rights Division in the Department of Justice and expand the FBI for investigation of civil-rights cases. In clear and unequivocal language it would prescribe severe penalties for any person or group convicted of injuring, oppressing, threatening, or intimidating any residents of any State or Territory in the free exercise or enjoyment of his constitutional rights. The Federal Government would become in fact, as it ought to be, the guardian of those constitutional rights that have been specially entrusted to its protection. Whether the bill goes beyond this is a matter that will require thorough study, but the history of inaction under the old civil-rights law now on the books is sufficient indication that more positive instructions to law-enforcement officials are desirable in this field.

Perhaps more important are the sections designed to safeguard the right to vote. The fifteenth amendment puts Congress under obligation to protect the right to vote against discrimination on grounds of "race, color, or previous condition of servitude." Congress has never adequately met this responsibility. We have previously expressed the belief that, if this one basic right were safeguarded as it ought to be, other problems of discrimination would be gradually ironed out through the democratic method of electing State and local policy makers.

The last provision of this omnibus bill would end discrimination in interstate transportation facilities. Certainly this, too, is a field in which a national policy in keeping with the democratic tradition ought to be declared. The Supreme Court has tried to put such a policy into effect without any specific legislation, but it can never be satisfactorily applied until the will of Congress has been positively declared. In our opinion, Congress would be making an excellent start on a long-range program for the safeguarding of civil rights if it would enact this bill at the present session and send to the States for their ratification Senator Holland's resolution to amend the Constitution by outlawing State poll taxes.

Monsignor SHEEHY. I think the real advantages of the bill are that we get all of these things together in one bill and can consider them, instead of taking them up piece by piece, which would be a long-drawn-out, and to you probably a rather painful, process.

Senator WILEY. What I am getting at is we have a situation that you and your organization feel calls for a remedy.

Monsignor SHEEHY. Yes, sir.

Senator WILEY. As I get it from your testimony, the purpose of this organization, this Commission, would be to study; and in that study have the power to investigate.

Monsignor SHEEHY. Yes, sir.

Senator WILEY. Then the results would be a summation of your conclusions which you think would be valuable to the legislative body, I presume.

Monsignor SHEEHY. Yes, sir.

Senator WILEY. Well, is that the sum and substance of what this bill does?

Monsignor SHEEHY. Yes.

Senator MCGRATH. The bill also amends certain existing civil-rights statutes which are rather technical.

Monsignor SHEEHY. This bill goes further than that, I think. If I may go a little bit further, speaking now not as a representative of the council but as an individual, it seems to me that this is an essential step forward but that we must still rely upon the fact that we are going to reach this objective for which we are all striving by education. Where it has been slowed up or retarded, then it is necessary for the Government to come in with certain authority and powers and investigation to cover areas which are not adequately covered in national life now.

In other words, I hope the day will come when, if this bill becomes the law, as I hope it shall, this will not be necessary; but that will not be so until our general process of education on civil rights has captured the loyalties and the following of all of the people.

Senator WILEY. I think from your testimony, and I presume from that editorial, I get the idea that this is another commission, the purpose of which is very laudatory, but the problem in my mind is whether or not we are going to get any remedy that is effective unless and until, if your recommendations are vital and dynamic, the institutions in America will take hold of those recommendations and bring

about this reeducation in our thinking and living. You well know that one of our great political contests is the problem of States' rights and the problem of the Federal Government, and it is not an easy matter to determine. The Federal Government can very easily become, as we have seen in the last 20 or 25 years, so autocratic and dictatorial that it presents an opportunity for a Hitler or Mussolini or Cromwell, and we have to watch that.

Monsignor SHEEHY. Precisely.

Senator WILEY. That is where this balance comes in; and, while I do not think that any thinking person who loves this country stands for the abuse of civil rights, we have to be sure that the remedy is not worse than the disease.

Monsignor SHEEHY. Senator, along that line in this bill of Senator McGrath's you will see also the suggestion of a congressional committee. I believe Senator McGrath has that included.

Senator McGRATH. That is correct.

Senator WILEY. I think that is a very good suggestion.

Monsignor SHEEHY. A Committee on Civil Rights. I agree wholeheartedly with what you say about too great centralization of power. I think, if we keep this under the Congress of the United States with a joint committee of the Senate and House, well and good.

Another implementation of these ideals is the creation of a special division of the Department of Justice. I do not think that alters particularly our present structure. The Commission would work with, and I assume largely as a fact-finding agency, with the agencies of the Government; but the police powers are not vested in this Commission save, of course, the power to subpena witnesses, and so on.

Senator WILEY. It would not have, as you say, any police powers. We want to make sure that the commissions do not have any legislative power, either. We have too many of them legislating now.

Monsignor SHEEHY. Yes; I agree with you on that point; and I am sure the members of the council whom I represent would also agree on that point. They do not believe that setting up this Commission and the passage of this bill would bring about the further centralization of power.

Senator WILEY. I notice in section 242 (a) that title 18 is amended, and the following new section is there:

242 (a). The rights, privileges, and immunities referred to in title 18, United States Code, section 242, shall be deemed to include, but shall not be limited to, the following:

(1) The right to be immune from exaction of fines, or deprivations of property, without due process of law.

(2) The right to be immune from punishment for crime or alleged criminal offenses except after a fair trial and upon conviction and sentence pursuant to due process of law.

(3) The right to be immune from physical violence applied to exact testimony or to compel confession of crime or alleged offenses.

(4) The right to be free of illegal restraint of the person.

(5) The right to protection of person and property without discrimination by reason of race, color, religion, or national origin.

Up to there you have your five. Are they not all included under the constitutional rights of the citizen now?

Senator McGRATH. Some are included under the constitutional rights of citizens, but not the constitutional rights of inhabitants. Section 241 of the existing code is changed to make it apply to inhabitants of the United States, as distinguished from citizens.

Senator WILEY. You mean now you have included everyone who comes to this country.

Senator MCGRATH. Every human being that is in the country.

Senator WILEY. That is the very purpose of that?

Senator MCGRATH. No, it further extends that 241, 242, the present forms are largely conspiracy statutes, and there is an extension of jurisdiction to make them apply to the individual.

Senator WILEY. Now, we are getting right to the point. You are not simply creating a commission. You are legislating here on some fundamental law.

Senator MCGRATH. If the witness will excuse me, the witness has addressed himself to the subject of the Commission. This is an omnibus bill, so-called. It has many parts and many sections, in addition to setting up of these commissions, and this probably would be an appropriate time to set forth then, in the record, exactly what it does do.

Section 1 of the act provides for the dividing of the act into titles and parts according to a table of contents, and for a short title, which short title is "Civil Rights Act of 1949."

Section 2 contains legislative findings and declarations as is common in most statutes of this kind.

Section 3 is the ordinary separability clause in the event that any part of the act is found to be unconstitutional. That does not affect the remainder of the act that may be constitutional.

Section 4 is an authorization for appropriations to carry out the provisions of the act. That is with respect to the congressional commission, and with respect to a Civil Rights Division in the Department of Justice.

Senator WILEY. Is there any estimate as to what that would cost?

Senator MCGRATH. No, I have not an immediate estimate on that.

Title I of the act proceeds as follows:

The first part 1 of title I, section 101, creates a five-member Commission on Civil Rights in the Executive Branch of the Government, with provisions for the appointment of members, the officers, vacancies, quorum, and compensation.

Section 102 of title I provides for the duties and functions of the Commission, including the making of an annual report to the President.

Section 103 of title I provides for the use of advisory committees, consultation with public and private agencies, and Federal agency cooperation. It provides for a paid staff, as well as for the use of voluntary services.

Part 2, known as the Civil Rights Division of the Department of Justice.

Section 111 calls for the appointment of an additional Assistant Attorney General to be in charge, under the direction of the Attorney General, of a Civil Rights Division of the Department of Justice.

Section 112 makes provision for increasing, to the extent necessary, the personnel of the Federal Bureau of Investigation to carry out the duties of the Bureau in respect to investigation of civil rights cases; and for the Bureau to include special training of its agents for the investigation of civil rights cases.

Part 3 of the proposed act sets up a Joint Congressional Committee on Civil Rights.

Section 121 of part 3 establishes such a Joint Congressional Committee on Civil Rights to be composed of 14 members, 7 Senators to be appointed by the President of the Senate, and 7 Members of the House of Representatives to be appointed by the Speaker, with due regard to party representation.

Senator WILEY. What does that last phrase mean, "with due regard to party representation"?

Senator MCGRATH. If the Republicans have 10 percent of the Members of the Congress, they get 10 percent of the members of the Commission.

Senator WILEY. Percentagewise, you mean? That is not the way it has been going in this Judiciary of the courts. We do not get any.

Senator MCGRATH. It would be perfectly agreeable to me, so both parties have equal representation on such Commission, because I think both parties are equally interested.

Senator WILEY. I think that would be a very constructive suggestion.

Senator MCGRATH. Section 122 of part 3 sets forth the duties of the committee.

Section 123 deals with vacancies on the joint congressional committee, and provides for the selection of its presiding officer.

Section 124 makes provision for hearings, sets forth power of subpena, and authorization of expenditures.

Section 125 provides for the formalities of disbursements.

Section 126 authorizes the use of advisory committees and consultation with public and private agencies.

The act then proceeds to title II, which are proviisons to strengthen protection of the individual's rights to liberty, security, citizenship, and its privileges.

Senator WILEY. Would you mind telling me, Senator, because at 11 o'clock I have to leave, where it changes the present substantive law? You have created a commission. Now what does it do to the substantive law?

Senator MCGRATH. I have it all set forth here, and I can probably give it to you much more concretely by using the following text.

Section 201, among the existing civil rights laws on the books at the present time, is 18 U. S. C. 241. This is a criminal conspiracy statute which has been used to protect federally secured rights against encroachment by both private individuals and public officers, and several changes are proposed in this act.

The phrase "inhabitants of any State, Territory, or district" is substitute for the word "citizen," so that the statute hereafter applies to any inhabitant within the United States as distinguished from any citizen of the United States.

Senator WILEY. Would you mind telling me what was back of that change?

Senator MCGRATH. It is always a question of citizenship and we are here dealing with human rights which are no different in mankind, regardless of what State he may be a citizen of.

Senator WILEY. I cannot agree with you saying simply that; you are dealing with civil rights. One of the great problems of America today is that because of the so-called theory that we have, we permit every Communist and every inhabitant that is not a citizen to abuse our hospitality, and that is what they are doing constantly. I am

wondering whether that has been thought through. I think that is very serious, if that is the very purpose of it. I have not had time to study the bill. I am sure the monsignor agrees with me on that. One of our great problems is handling these folks. There are hundreds of thousands of them coming over the border both ways, and they get into this country. We know the Commies are doing that. Then they set up the right of citizen or the right of inhabitant or the right of an individual. You cannot abuse his rights, and so forth. I think that to protect our own, in order to see that our house is not termited, we have to think that phrase through.

Senator McGRATH. In section 242 of the so-called civil rights statute we have always used the word "inhabitant" and this simply brings these two sections into conformity. I do not think that there is any danger that it extends any additional privileges to people within the United States except those privileges which ordinary conscience would dictate we would extend to any human being within the borders of the United States.

Senator WILEY. Let us take freedom of speech, freedom of the press. Any of these Commies come in here, and they immediately abuse that right and privilege. It is largely due to their activity that you get so much what you might call rotten thinking and even among our youngsters and our schools, and we have instances right along where they hide under that so-called constitutional provision. Now you are making it definite and certain that anybody that happens to be here can abuse the hospitality of the country all he wants to. However, I just bring this up because after all, that is an important bill.

Senator McGRATH. This change would bring the language into conformity with that of 18 U. S. C. 242, which is a generally parallel protective statute aimed at State officers who deprive inhabitants of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.

Senator WILEY. Was that not in the last bill we reported?

Senator McGRATH. No. In the antilynching bill? No, sir.

Senator WILEY. Are you sure of that?

Senator McGRATH. Positive.

Senator WILEY. Was not that State officer?

Senator McGRATH. Section 242 makes it an offense for the State officer—we call it a parallel protective statute that makes it an offense for State officers to deprive inhabitants of rights, privileges, and immunities secured or protected by the Constitution and laws of the United States.

Section 241 has had a narrower construction because of the use of the word "citizen," as for example in the case of *Baldwin* v. *Franks*, 120 U. S. 678, holding that an alien did not come within the protection of the section.

On the other hand, in referring to the rights of "inhabitants," the language used in 18 U. S. C. 242 does not exclude from its scope protection of the rights which may happen to be accorded only to citizens, such as the right to vote. Thus section 242 addressed to protecting the rights of inhabitants applies to the deprivation of constitutional rights of qualified voters to choose representatives in Congress, and was held to protect the right of voters in a primary election, which

was prerequisite to the choice of party condidates for a Congressional election, to have their votes counted (*U. S.* v. *Classic*, 313 U. S. 249).

It should also be noted that this *Baldwin* v. *Franks*, doubt was expressed as to whether Congress had or had not used the word "citizen" in the broader or popular sense of resident, inhabitant, or person.

There was a dissenting opinion by Justice Harlan, which the majority of the Court resolved in favor of the narrower political meaning of citizen. They did not accept the view that Congress had used it in the broader sense. In so doing, the Court added:

> It may be by this construction of the statute some are excluded from the protection it affords who are as much entitled to it as those who are included; but that is a defect, if it exists, which can only be cured by Congress, but not by the courts.

This statute seems to bring about that cure.

In addition to removing what appears to be an unnecessary technical limitation to "citizens," it may properly be urged that the extension of coverage is in accordance with the general public policy of the United States, as subscribed to in the United Nations Charter, to promote respect for, and observance of, human rights and fundamental freedoms for all.

Senator WILEY. Does this tie the United Nations Charter into this?

Senator MCGRATH. No, but it is legitimate to argue that this is in conformity with our commitments to the world organization for the protection of human rights.

Senator WILEY. I want to make it plain, Mr. Chairman, so far as human rights are concerned, I am in favor of the largest broadest scope that will see to it that the individual has his rights, but I know also again that many times in pursuing a great objective, we go off on a legal tangent, and the result is that instead of correcting the evil, we have messed up the situation.

Who drew this bill?

Senator MCGRATH. This is known as the administration bill. It was drawn probably by a number of agencies in the Government who are engaged in these problems, principally the Department of Justice.

Senator WILEY. Is there any particular parentage to the bill that should go in the record?

Senator MCGRATH. The bill is the administration bill approved by the President of the United States, introduced by me at his request.

I would say that is pretty good parentage. Do you not agree?

Senator WILEY. No remarks, please.

Monsignor SHEEHY. May I state that members of the committee, including Mr. Patterson, are not members of the Democratic Party?

I hope I did not give any other impression in my testimony, if you will look through the members of that committee, and I do not think that bill should be considered as a partisan or party bill.

Senator WILEY. That is why I asked about the parentage of it. I wanted to know who helped draft it, because language is used as a screen, as you know.

Monsignor SHEEHY. I will tell you, Senator, who drafted this that I have given. The two primary actors were Mr. Swope of the New York Herald Tribune, who is not a member of the Democratic Party, so far as I know, Mr. Robert Patterson, former Secretary of War, Morris Ernst, I believe, is a member of the Democratic Party—so the

commission which I represent is not a party commission. In fact, of the seven of us who visited the President, I happened to check at the time, four had been quite active in party matters not connected with the Democratic Party, and I am quite independent in politics, because as a citizen of Washington I have no political affiliation.

Senator WILEY. I again must be sure that I am not misunderstood. I did not mean to pass any reflection upon the bill or upon the parentage, but I am interested in getting those objectives, Monsignor, that you mentioned into operation so that those specific objectives are carried out and that there is not any wreckage on the way, and that is why it is very important at times to know who spearheads legislation. You people got back of it. That is common practice. This great committee of which you are a member has sanctioned the general concept. You have clearly and definitely stated your concept, which is to protect the rights of the individual's civil rights. The question is does it do it, or does it reach out and do something else? You said in the first instance it created the commission. I wanted to know how the substantive law is changed. I have asked the Senator whether it does things you do not want really done. If some of these folks that you mentioned had had lawyers from New York that drew this bill in conjunction with folks in the Government, maybe you—there would be a little bit of suspicion always that there is some chance here to try to get in, I would not say New Deal policies, but away leftist policies, which we have seen too often occur to the detriment of the inherent rights of the individual. We found that too often, and some of us who are mere blunt midwesterners who were not really affected by these so-called New Deal, these civil-rights propositions, as they are in the South or some of the other places, because out there we have law and order, and the Negro, they have no problems. They are treated the same as anyone else. But we want to make sure that we proceed on a course to clean up the mess, that we do not make a worse mess. That is my only suggestion, and I am sure that the Senator here whom I love as I could love any real sincere Democrat, knows that I have nothing personal in the matter when I referred to the parentage.

Senator MCGRATH. That is perfectly all right. By the same token, Senator, I do not think that no matter how pleasant and happy life may be in Wisconsin, that people of Wisconsin can feel that they are detached from this problem, because any social evils may tend to tear down the democratic way of life or tend to drive people to extreme positions in order that they may secure human rights in any part of our country, has a vital effect on every other part of the country, Wisconsin included.

Senator WILEY. You could not include the people of Wisconsin who pay and pay through the nose for the rest of the States in everything else, and get nothing back from you Democrats to construct St. Lawrence waterways and everything else. You cannot accuse them of being disinterested. They are just practical hardworking producing power, however, that are sensitive to the fact that this country was not built by legislation. It was built by men and women, and that legislation cannot correct morality, it cannot correct economic laws, it cannot do any of those things, but you think it can correct the evils inherent in individuals who abuse civil rights. We will try, but in that trying let us not kick over the cart so the cart cannot function.

Will you put that all in the record so I can read it?

Senator McGRATH. There are a good many changes of law here. This omnibus bill we are speaking of deals with railroad transportation and a good many other things which you most certainly ought to be familiar with. There is no point in a hearing of this kind, as I see it, in discussing a legal brief. I think that is something for us to do in executive session. I will put this whole statement into the record, which is a complete legal brief as to everything that is done by S. 1725, and let us proceed with the remaining witnesses that I am sure are not here to discuss legal technical matters but want to indicate their support of the legislation.

Section 241 of title 18 U. S. C. is a conspiracy provision. There is no legal reason why protection should be given only in cases of conspiracy. The President, in his message of February 2, 1948 (vol. 94 Congressional Record, 960), recommended an extension to the cases of infringements by persons acting individually. That is the purport of new subsection (b). As a result the present section 241 is retained by numbering it subsection (a). It remains separately identifiable as the conspiracy provision, which as had a long history of interpretation and which has been sustained as constitutional against various forms of attack, *Ex parte Yarbrough* (110 U. S. 651); *Logan* v. *United States* (144 U. S. 263); *United States v. Mosely* (238 U. S. 383).

An additional reason for separating the present conspiracy law, new subsection (a), from the proposed individual responsibility provision, new subsection (b), was the desire to adjust penalty provisions. It was thought that the action by a single individual condemned in section 241 (b) might parallel in penalty the individual violation in section 242 (a principal difference between the two sections is that the offender in sec. 242 is always a public officer). And since section 242 has always been criticized as being too mild for the serious cases (though otherwise advantageous, as discussed below in the comment under sec. 202), a more formidable penalty is provided for those cases in both 241 (b) and 242.

The purpose of new subsection (c) of section 241 is to plug the gaps in the civil remedy side. There already appears to be in existence a civil remedy for damages more or less covering the existing conspiracy violations of section 241 (a). This remedy is found in 8 U. S. C. 47. There is no parallel to cover proposed subsection (b), absent a conspiracy. In neither the case of subsection (a) nor subsection (b) is there clear-cut authorization for the bringing of proceedings other than for damages, unless the violators of section 241 (a) and 241 (b) should happen to be state or territorial officers (more often chargeable under 18 U. S. C. 242), in which case 8 U. S. C. 43 would appear to afford civil remedies ("in an action at law, suit in equity or other proper proceedings for redress"). See *Hague* v. *CIO* (307 U. S. 496), a suit in equity against state officers. Parenthetically, for all practical purposes, 8 U. S. C. 43 is a parallel, on the civil side, of 18 U. S. C. 242, see *Picking* v. *Pa. R. R. Co.* (151 F. (2d) 240), rehearing denied (152 F. (2d) 753); and it appears adequate to cover the situations on the civil side, which are similar to the criminal violations of 18 U. S. C. 242, without requiring further amendment or supplement of section 242 in that regard.

The jurisdictional provision of new subsection (c) of section 241 under which both the Federal district courts and the State and territorial courts shall have jurisdiction of the civil proceedings, is well fortified with precedents. A similar provision in the Emergency Price Control Act of 1942, (50 U. S. C. A. App., secs. 925 (c) and 942 (k), was recently sustained in *Testa* v. *Katt* (330 U. S. 386). For an earlier example, under the Federal Employers' Liability Act, see *Mondou* v. *NYNH, etc. R. R. Co.* (223 U. S. 1).

The portion of the proposed jurisdictional provision which reads: "without regard to the sum or value of the matter in controversy" has been inserted to avoid misapprehension in these cases that jurisdiction of the Federal district courts is subject to the $3,000 or more limitation of 28 U. S. C. 1331. The latter is a general jurisdictional provision. Exempted from it are the existing civil rights actions maintainable in the district courts, under 28 U. S. C. 1343, without regard to money value. *Douglas* v. *City of Jeanette* (319 U. S. 157, rehearing denied 782); *Hague* v. *CIO* (307 U. S. 498). However, paragraphs (1) and (2) of 28 U. S. C. 1343, refer specifically to suits for damages growing out of the conspiracy provisions of 8 U. S. C. 47, and paragraph (3) follows closely the language of 8 U. S. C. 43, apparently dealing only with suits against public officers—"to redress the deprivation under color of any law, etc." (28 U. S. C. 1343 (3)). In consequence it does not appear that 28 U. S. C. 1343 covers all of the civil rights cases which it is now proposed to create civil actions. Hence the need for a provision which obviates a possible judicial construction placing the new causes of action under the provisions of 28 U. S. C. 1331 and its money value requirement.

Section 202: This section amends 18 U. S. C. 242, but leaves it intact except in regard to the matter of penalty. As already indicated in the discussion of the previous section, this is a statute which is used to protect federally secured rights against encroachment by State officers. There has been criticism that the penalty of a fine of not more than $1,000 or imprisonment of not more than one year, or both, is too light in the serious cases. On the other hand, the increase of the prison term would change the nature of the offense from a misdemeanor to a felony, with a loss of the facility the Government now enjoys in being able to prosecute by information rather than by the more cumbersome method of proceeding by indictment (18 U. S. C. 1, *Catlette* v. *United States*, 132 F. (2d) 902). Accordingly, it is deemed preferable to leave the general punishment at the misdemeanor level, but, in cases where the wrong results in death or maiming, to provide for the greater penalty. On the civil side, as already observed in the comment on the preceding section, the existing remedies under 8 U. S. C. 43 appear adequate for this section.

Section 203 provides a supplement to 18 U. S. C. 242. The intent is to provide an enumeration of some of the rights, privileges, and immunities secured and protected by the Constitution and laws of the United States, of which inhabitants shall not be willfully deprived (which is the general language of 18 U. S. C. 242), in order to overcome what seems to be a handicap at trial in the use of section 242, as recently imposed in *Screws* v. *United States* (325 U. S. 91). Pursuant to the Screws case, the Government, in order to obtain a conviction, under 18 U. S. C. 242, is required to prove, and the judge must adequately instruct the jury, that the defendant has "wilfully" de-

prived his victim of a constitutional right, which specific right the defendant had in mind at the time. Proof of a general "bad" purpose alone may not be enough (325 U. S. 91, 103). More recently to the same effect, *Pullen* v. *United States* (164 F. (2d) 756), reversing a conviction for failure of the indictment and the judge's charge with respect to "wilfully."

The enumeration of rights is of course only partial and does not purport to enumerate all Federal rights running against officers. But it is demonstrable that none of the enumeration creates any new right not heretofore sustained by the courts. The following examples are cited:

1. The right to be immune from extraction of fines without due process of law, *Culp* v. *United States* (131 F. (2d) 93) (imprisonment by State officer without cause and for purpose of extortion is denial of due process and an offense under 18 U. S. C. 242 (formerly 18 U. S. C. 53)).

2. The right to be immune from punishment for crime except after fair trial and due sentence, *Screws* v. *United States* (325 U. S. 91) (sheriff beating prisoner to death may be punishable under 18 U. S. C. 242, formerly 18 U. S. C. 52); *Screws* v. *United States* (160 F. (2d) 746) (sheriff making arrest and, without commitment or trial, causing death of prisoner by forcing him to jump into a river violated 18 U. S. C. 242, formerly 18 U. S. C. 52); *Moore* v. *Dempsey*, (261 U. S. 86) (conviction in State trial under mob domination is void); *Mooney* v. *Holohan* (294 U. S. 103) (criminal conviction procured by State prosecuting authorities on perjured testimony, known by them to be perjured, is without due process).

3. The right to be immune from physical violence applied to exact testimony or to compel confession of crime, *Chambers* v. *Florida* (309 U. S. 227) (convictions obtained in State courts by coerced confessions are void under fourteenth amendment); *United States* v. *Sutherland*, 37 F. Supp. 344 (state officer using assault and torture to extort confession of crime violates 18 U. S. C. 242, formerly 18 U. S. C. 52).

4. The right to be free of illegal restraint of the person, *Catlette* v. *United States* (132 F. (2d) 902) (sheriff detaining individuals in his office and compelling them to submit to indignities violates 18 U. S. C. 242, formerly 18 U. S. C. 52); *United States* v. *Trierweiller* (52 F. Supp. 4) (sheriff and others attempting to arrest and killing transient, without justification, violated 18 U. S. C. 242, formerly 18 U. S. C. 52).

5. The right to protection of person and property without discrimination by reason of race, color, religion, or national origin, *Catlette* v. *United States* (132 F. (2d) 902) (sheriff subjecting victims to indignities by reason of their membership in a religious sect and failing to protect them from group violence violates 18 U. S. C. 242, formerly 18 U. S. C. 52); *Yick Wo* v. *Hopkins* (118 U. S. 35) (unequal administration of State law, because of a person's race or nationality, resulting in his being deprived of a property right, is a denial of rights under the fourteenth amendment).

6. The right to vote as protected by Federal law, *United States* v. *Classic* (313 U. S. 299, rehearing denied 314 U. S. 707) (violation of right of qualified voters in primary election for congressional candidate to have their votes counted, punishable under 18 U. S. C. 242, formerly 18 U. S. C. 52); *United States* v. *Saylor* (322 U. S.

385, rehearing denied 323 U. S. 809) (right of voter in a congressional election to have his vote honestly counted is violated by a conspiracy of election officials to stuff the ballot box, and is punishable under 18 U. S. C. 241, formerly 18 U. S. C. 51); *Smith* v. *Allwright* (321 U. S. 649), rehearing denied (322 U. S. 769) (right of a citizen to vote in primary for candidates for Congress is a right which may not be abridged by a State on account of race or color, and damages are recoverable for violation under 8 U. S. C. 43).

Section 204 amends 18 U. S. C. 1583, formerly 18 U. S. C. 443. This is a statute enacted under the plenary power of the thirteenth amendment to the United States Constitution, ptnishing the kidnaping or enticing of persons for purposes of subjecting them to slavery or involuntary servitude. The amendment purports to make clear that the holding in involuntary servitude is punishable. A discussion of the doubt and the causes thereof, with respect to the existing provision, is found in 29 Cornell Law Quarterly 203. The insertion of "other means of transportation" is simply to bring the statute up to date supplementing the word "vessel."

Insertion of the words "within or beyond the United States" was to settle any question that an enticement on board a vessel, and so forth, with intent that one be made a slave or held in involuntary servitude, applies within as well as without the country.

PART 2. PROTECTION OF RIGHT TO POLITICAL PARTICIPATION

Section 211 is an amendment of section 1 of the present Hatch Act, formerly 18 U. S. C. 61, now 18 U. S. C. 594. This section of the Hatch Act presently makes punishable intimidation and coercion for the purpose of interfering with the right of another to vote as he chooses at elections for national office. The purpose of the amendment is to make the provisions applicable to primary and special elections as well as to general elections for Federal office. The existing language is "any election" (for the named offices). The amendment would make it "any general, special, or primary election" (for the named offices).

The Hatch Act was enacted in 1939 at a time when, due to the decision in *Newberry* v. *United States* (256 U. S. 232), there was doubt in Congress as to the constitutionality of Federal regulation of nominating primaries. This doubt was resolved in 1941, in favor of Federal power, by *United States* v. *Classic* (317 U. S. 299, 324, fn. 8). Nevertheless, in view of the legislative history, companion sections to section 1 of the Hatch Act were construed, since the Classic case, not to include primary elections (*United States* v. *Malphurs*, 41 F. Supp. 817; vacated on other grounds 316 U. S. 1). Accordingly, the amendatory insertion, above, is necessary notwithstanding the generality of the existing language "any election," and so forth.

Section 212 is an amendment of one of the old existing civil rights' statutes, enacted as part of the act of May 31, 1870, and which became section 2004 of the Revised Statutes (8 U. S. C. 31). Section 2004 presently declares it to be the right of citizens to vote at any election by the people in any State, Territory, county, municipality, or other territorial subdivision without distinction as to race, color, or previous condition of servitude.

As originally drafted, it was the first section of the act of May 31, 1870, and depended upon remedies provided in other sections of that

act and later acts, parts of which were held unconstitutional or repealed. In order to avoid any question as to the kind of punishment or remedy which is available in vindication or protection of the stated right, the amendment inserts a specific reference to the two basic criminal and civil-remedy provisions directed at State officers, namely: 18 U. S. C. 242 and 8 U. S. C. 43. The letter, providing civil remedies, has already been successfully applied in the past to the present statute (8 U. S. C. 31) in a number of cases such as *Nixon* v. *Herndon* (273 U. S. 536), *Nixon* v. *Condon* (286 U. S. 73), *Smith* v. *Allwright* (321 U. S. 649), and *Chapman* v. *King* (154 F. (2d) 460; cert. denied, 327 U. S. 800). There appears to be no parallel history of applying the corresponding criminal sanctions of 18 U. S. C. 242 (formerly 18 U. S. C. 52) to 8 U. S. C. 31, although in *United States* v. *Stone* (188 Fed. 836), an indictment under section 20 of the Criminal Code (18 U. S. C. 52, now 18 U. S. C. 242), charging that State officials acting under color of State law deprived Negroes of their vote or made it difficult for them to vote their choice at a congressional election, was sustained against a demurrer. Indeed, it was not until the comparatively recent decision in *Classic case* ((1941) 313 U. S. 299), that the potentialities of 18 U. S. C. 242 in protecting voting rights became evident. That 8 U. S. C. 43 and 18 U. S. C. 242 (formerly 18 U. S. C. 42) are regarded in pari materia with respect to the nature of the offense charged, see *Picking* v. *Pa. R. R. Co.* (151 F. (2d) 240; rehearing denied, 152 F. (2d) 753).

The phrase "and other applicable provisions of law" is designed to preclude any implication that by specifying two statutory sections there is an exclusion of other sections of the criminal and civil statutes, which, by operation of law and construction, are part of the legal arsenal in the use of the specified sections. Thus, under existing law, the same offense under 18 U. S. C. 242 may, because of a conspiracy, give rise to an added count in the indictment for a violation of 18 U. S. C. 241 (formerly 18 U. S. C. 51), *United States* v. *Classic* (313 U. S. 299) (conspiracy of public officers); or a prosecution solely under 18 U. S. C. 241, *United States* v. *Ellis* (43 F. Supp. 321) (conspiracy of public officers and private individuals); or a prosecution under 18 U. S. C. 371 (formerly 18 U. S. C. 88) and 18 U. S. C. 242, *United States* v. *Trierweiller* (52 F. Supp. 4) (conspiracy of public officers and private individuals). It is intended that these and any other such remedies shall be available.

A number of changes in language have been made both in the interest of modernizing the old phraseology and closing certain obvious holes now open for construction. For example, insertion of the phrase "general, special, or primary" in describing "election by the people," is intended to avoid any handicaps of earlier legislative history noted supra in the common the similar problem in connection with amending the Hatch Act.

One change in verbiage deserves special comment. The present statute speaks only of distinctions of race, color, or previous condition of servitude. The words "previous condition of servitude" have been dropped as unnecessary, since the slave-holding days are far removed. In their place has been substituted the words "religion or national origin" (consistent with other nondiscriminatory provisions of this bill).

It is clear that the existing guaranty against distinctions in voting based on race or color is expressly authorized by the fifteenth amendment (*United States* v. *Reese*, 92 U. S. 214; *Smith* v. *Allwright*, 321 U. S. 649), and is validly applicable in all sections whether Federal, State, or local (*Chapman* v. *King*, 154 F. (2d) 460; cert. denied, 327 U. S. 800). In addition the present statute has been sustained under the equal-protection clause of the fourteenth amendment (*Nixon* v. *Herndon*, 273 U. S. 536; *Nixon* v. *Condon*, 286 U. S. 73), which clause also is the source for the claim that distinctions in voting based on religious or national origin are arbitrary and unreasonable classifications both as they appear in State laws (cf. *Cantwell* v. *Connecticut*, 310 U. S. 296; *Truax* v. *Raich*, 239 U. S. 33; *Orama* v. *California*, 332 U. S. 633), or in the administration of such laws (*Yick Wa* v. *Hopkins*, 118 U. S. 35). See also *Hirabayashi* v. *United States* (320 U. S. 81, 100), wherein the Court recognized that, as a general rule, "Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality." Moreover, the instant statute deals with the right of citizens to vote, and it could easily be regarded as an infringement upon the exclusively Federal naturalization power for States to deny, or differently accord, to citizens voting rights based on the national origin of such citizens, wholly apart from the aspect of an unreasonable classification (Cf. *Truax* v. *Raich*, 239 U. S. 33, 42, where the Court took the view that for a State to deny or limit aliens in the right to work in private employment would interfere with the power of Congress to control immigration).

Section 213 is designed to supplement section 211 of this part by creating civil remedies for violations of that section, and to authorize for both sections 211 and 212 of this part the bringing of suits by the Attorney General in the district courts for preventive, declaratory, and other relief. The reason for this seemingly uneven application is that 18 U. S. C. 594, which section 211 amends, already contains criminal penalties but has no clear civil remedy. On the other hand section 212 has specifically rewritten 8 U. S. C. 31 to contain within itself references to both criminal penalties and civil remedies, since the existence of the former was not clear and the latter existed by construction. In addition, as to both sections, there is need for recognition of the right of public authority to take timely civil measures in heading off threatened denials of the right to vote.

With respect to the jurisdictional provisions, the precedents for State court jurisdiction are cited in the analysis of part 1, section 201, supra. The need for specifically excluding regard to the sum or value of the matter in controversy, so far as the United States district courts are concerned, is also explained in the analysis of part 1, section 201, supra. No similar reference is needed in the case of suits by the Attorney General since the Federal district courts obtain jurisdiction in a suit where the United States is a party plaintiff regardless of the amount at issue (28 U. S. C. 1345; *United States* v. *Sayward*, 160 U. S. 493; *United States* v. *Conti*, 27 F. Supp. 756; *RFC* v. *Krauss*, 12 F. Sup. 4).

PART 3. PROHIBITION AGAINST DISCRIMINATION OR SEGREGATION IN INTERSTATE TRANSPORTATION

This part is needed to both implement and supplement existing Supreme Court decisions.

In *Morgan* v. *Virginia* (328 U. S. 373 (1946)) the Court held a State statute, which required segregation of the races in motor busses, unconstitutional in the case of an interstate passenger as a burden on interstate commerce. There is evidence that some State officers are continuing to enforce segregation laws against the interstate passengers.

Moreover, the Morgan case dealt only with State law and not with the action of the interstate carriers themselves (*Morgan* v. *Virginia*, 328 U. S. 373, 377, fn. 12), who may and do continue to segregate (*Henderson* v. *Interstate Commerce Commission*, 80 F. Supp. (Adv. Op.) 32 (1948), carefully differentiating the *Morgan* case at (80 F. Supp.) p. 38).

In cases involving the carriers and certain segregation practices and requirements, which the Court felt overstepped the bounds of existing law, the Supreme Court has stated on several occasions that constitutional rights are personal and not racial (*Mitchell* v. *United States*, 313 U. S. 80, 96; *McCabe* v. *A. T. and S. F. Ry. Co.*, 235 U. S. 151, 161) (see also the restrictive covenants case for enunciation of the same principle in another field, *Shelly* v. *Kraemer*, 334 U. S. 1, 22). The action of the Congress is needed to give unequivocal effect to this principle in interstate travel.

Section 221 (a) declares that all persons traveling within the jurisdiction of the United States shall be entitled to equal treatment in the enjoyment of the accommodations of any public conveyance or facility operated by a common carrier engaged in interstate or foreign commerce without discrimination or segregation based on race, color, religion, or national origin.

Section 221 (b) makes punishable by fine, no imprisonment, and subject to civil suit, the conduct of anyone who denies or attempts to deny equal treatment to travelers of every race, color, religion, or national origin, in the use of the accommodations of a public conveyance or facility operated by a common carrier engaged in interstate or foreign commerce. Civil suits may be brought in the State courts as well as the Federal district courts.

Section 222 makes it unlawful for the common carrier engaged in interstate or foreign commerce or any officer, agent, or employee thereof to segregate or otherwise discriminate against passengers using a public conveyance or facility of such carrier engaged in interstate or foreign commerce on account of the race, color, religion, or national origin of such passengers. Violations are subject to fine and civil suit, the latter being cognizable in State as well as Federal courts.

All right, Mr. Marshall.

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STATEMENT OF THURGOOD MARSHALL, SPECIAL COUNSEL, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, NEW YORK, N. Y.

Mr. MARSHALL. We have Mr. Wilkins and myself. Mr. Wilkins was to cover the general and I was to cover the specific, but, in view of the fact that Senator Wiley expects to leave, I can get to the specific, and then Mr. Wilkins, if it is agreeable with you, can come on.

Senator MCGRATH. Very well. Please proceed.

Mr. MARSHALL. I will start off, and Mr. Wilkins will follow.

The prepared statement will have to be changed, because of the first sentence.

I want to say first of all that I am here on behalf of the National Association for the Advancement of Colored People. I am, personally, and we are always happy to appear before committees, because I believe, so far as I am concerned, whenever I have an opportunity to appear in court, before a legislative committee, it gives a new faith in the way of life, or whatever you want to call it.

The statement itself I think if I read it, it is not too long, will cover it.

There can be no question that the thirteenth, fourteenth, and fifteenth amendments need implementation. This type of legislation meets that need. At the outset, it should be made clear that this bill does not in any form or fashion deprive any State or political subdivision thereof of its lawful rights. It is only aimed at prohibiting unlawful acts. It does not interfere with any Federal- or State-protected right.

Senator WILEY. You are not talking about the substantive law changes?

Mr. MARSHALL. Yes. It should also be pointed out that there is not a single provision, sentence, or word in this bill which is aimed at any particular section of the country. It will apply equally as well in Maine and Mississippi, California and Florida. No law-abiding citizen, whether he be a private individual or a governmental official, has any reason whatsoever to fear the enactment of this bill. On the other hand, the bill can have a deterring effect upon all private individuals and Government officials who have in the past or who contemplate in the future use of racial or religious prejudice as the basis for illegal action to deprive Americans of their federally protected rights.

Whatever progress has been made in recent years in the enforcement of federally protected rights has for the most part been brought about through the use of the Federal machinery. The progress that has been made in criminal actions to protect civil rights of Americans has been made by the United States Department of Justice in actions brought in the Federal courts. Progress in civil actions to protect and enforce civil rights has been made for the most part by private actions in Federal courts. Advances have resulted from interpretations by Federal judges, prominent among whom have been members of the bench from the South. Further progress has been halted by the limitations of the existing Federal statutes.

This bill does not propose any basic change in either the letter or spirit of the Declaration of Independence and Constitution of the

United States. All it proposes to do is to recognize the inalienable right of all Americans to be free from racial and religious discrimination in the exercise of their civil rights. Surely there is no one at this late date who denies that all Americans are equal before the law. Surely there is no one at this late date who takes the position that our Government should not take any necessary steps to insure the fullest protection of this principle.

The need for this legislation and the purpose of the legislation is clearly set forth in section II of the bill. After pointing out the differences between our principles of government and our practices, the bill states:

> Congress recognizes that it is essential to the national security and the general welfare that this gap between principle and practice be closed; and that more adequate protection of the civil rights of individuals must be provided to preserve our American heritage, halt the undermining of our constitutional guaranties, and prevent serious damage to our moral, social, economic, and political life, and to our international relations—

and—

> The Congress therefore declares that it is its purpose to strengthen and secure the civil rights of the people of the United States under the Constitution, and that it is the national policy to protect the right of the individual to be free from discrimination based upon race, color, religion, or national origin.

The bill then sets forth in detail the purposes sought to be accomplished by this act.

The proposal for a Commission on Civil Rights in the executive branch of the Government should cause little opposition. In the first place, there is no question of the authority of Congress to establish such a commission. In the second place, the President's Committee on Civil Rights and its unbiased report did much to clarify the atmosphere and to separate fact from speculation. It gives to everyone a clear indication of the possibility for good inherent in such a commission if it had congressional sanction and approval.

The Civil Rights Division of the Department of Justice, which started with the administration of Attorney General Frank Murphy, has made some progress in efforts to protect the civil rights of Americans without regard to race, creed, color, and national origin. During the period this Division has been in existence, and especially during the administration of Attorney General Tom Clark, the main reasons more progress has not been made are (1) the inadequacies of the existing civil-rights statutes; (2) the lack of full departmental status under an Assistant Attorney General; (3) lack of a sufficient number of agents for the Federal Bureau of Investigation; and, finally, the lack of sufficient funds to operate.

Senator WILEY. It is claimed by and large in the South that (1) there is violation of civil rights in relation to the lynching that takes place.

Mr. MARSHALL. And a lot of other things.

Senator WILEY. And (2) the violation in relation to civil rights where the colored man is not permitted to vote.

Mr. MARSHALL. That is another one.

Senator WILEY. And (3) what else?

Mr. MARSHALL. (3) is what is going on in Birmingham right now; a Negro buys a home, pays for it, moves in it, and they throw a bomb in and blow it up.

Senator WILEY. And (4)?

Mr. MARSHALL. (4) is just the complete denial of the feeling of violence and threatened violence. I do not think you included that in lynching, but that everlasting threat that, if you at any time stand up and insist that you are an American just like anyone else, you will either be lynched in the death portion of it or be maimed or beaten.

As to the other denial of civil rights down there, this bill does not, as I understand it, purport to protect all of the civil rights that are denied in the South. It is a pretty tough job.

Senator WILEY. Frankly, I am grateful to you for giving me these things. Is there any big stuff that you think of?

Mr. MARSHALL. Offhand—and incidentally I am down here two-thirds of my time—I would say they are the major ones, the denial of opportunity of employment in Government agencies and things like that. This is all-inclusive, but those are the major ones.

Senator WILEY. What does the bill do, and how does it do it, to protect those rights?

Mr. MARSHALL. Well, in the first place, we have some civil-rights statutes now; and, even with those that we have, the Department of Justice is blocked from the type of action that they could take under those statutes for departmental reasons. One is the Division is just in there as a division, does not have any money to operate on its own. It does not have status, and they do not have enough FBI men so that they can make the type of investigation necessary where they have a case of (*a*) that a Negro has been denied the rights you have just mentioned. They cannot make a thorough enough investigation, and they cannot get enough departmental action to bring the case to trial.

Senator WILEY. The bill provides additional help.

Mr. MARSHALL. It provides a moving arm for the Government to act with.

Senator WILEY. It gives additional help to the Attorney General's Department so that you feel that, even under the present statutes that exist, if they had that help, the Government could move in.

Mr. MARSHALL. Move in better than they have been, but it would not settle it.

Senator WILEY. All right. Now, then, the bill changes the law so that I assume what it tries to do is to create jurisdiction in the Federal Government in relation to offenses that are debatable whether or not the Government could take jurisdiction.

Mr. MARSHALL. If I might for just a moment say this, we take the position that this bill does not create any new right. It merely clarifies what was intended not only by the Constitution, thirteenth, fourteenth, and fifteenth amendments, but was also intended by the framers of the original civil-rights statutes.

For example, the changing of the language in there on each one of those sections, the ones you read where it is itemized, that was brought about by the decision in the case of Screws against the United States a couple of years ago in Georgia, came up from Georgia, where, after the case laid in court for at least 6 months, in the Supreme Court, and the majority opinion of the decision said that these rights, the old section 51 and section 52 of title 18, which is now 241 and 242, that they did not itemize the rights that they were intended to be protected; and the Court said, the Supreme Court said, that those rights

must be itemized so that, when you try man A for denying a right to man B, you must be able to say that man A deliberately took away a right that he knew he had.

Senator WILEY. What is that?

Mr. MARSHALL. Screws versus United States. It is in here, sir.

Senator WILEY. If it is in there, all right.

Senator MCGRATH. 325 U. S. 91.

Mr. MARSHALL. That was a decision where a policeman on the courthouse lawn beat a Negro's brains out, right on the lawn of the courthouse. And incidentally, as a result of the opinion in that case, he was subsequently tried and acquitted. And so that these rights here are not new rights in there.

I think the question was made in the interchange there; I think you said, sir, that those rights already existed. They do, but this is just Congress saying that these rights do exist so there will be no question from now on and we will know where everyone stands on it. And if I might say, sir, to my mind, I think it is a start that can be made. I for one am not in the group that believe that nothing can be done about this problem in the South. We have made progress. The criminal side has made progress in the cases in the Federal courts in the South. On civil cases we have made progress, with judges born and raised in the South, but we are now stymied because of certain blocks.

I think, sir, that, if it is agreeable with you, that we just submit the statement, because, from what you have read of your memorandum, I think there is no conflict between the legal side of the basis for this; but, if you want me to read it, sir, all the way through, I can.

Senator MCGRATH. It is most agreeable to me to place your whole statement in the file as prepared.

(Whereupon said statement was incorporated in the official files of the committee.)

Mr. MARSHALL. The proposals in S. 1725 and S. 1734 for the reorganization of the Civil Rights Division is, to my mind, so clearly necessary as to be beyond argument. The recommendation by the President's Committee on Civil Rights was based upon thorough study of cases referred to the Department by the organization I represent and other organizations, which basic civil rights had been denied Americans and in which the Department was hampered for the above reasons. My own experience with the Department bears out the need for the adoption of this section.

The adoption of this section of the bill will in itself be a demonstration to the world at large that our Government considers the protection of human rights, civil rights, and individual rights, of the highest importance. It will serve notice to those in this country who would deprive others of their basic constitutional rights that they will be subject to the same type of vigorous prosecution as has been exemplified by other divisions of our Department of Justice.

As I pointed out on the Commission on Civil Rights, there should be no argument in oppositon to the creation of a joint congressional Committee on Civil Rights. There is most certainly more need for a joint congressional Committee on Civil Rights than there is for the continued existence of the Committee on Un-American Activities. Our Congress should be at least as interested in the state of civil rights in our country as it is in other matters which have heretofore been

assigned to special committees. As a result of hearings by such a committee, research and investigations by its staff and Government agencies, Congress and each Member thereof, as well as our country and the world in general, would have the true picture of civil rights in this country. As to the actions of the committee itself, they will, of course, be subject to complete control by Congress.

Some 80 years ago the thirteenth, fourteenth, and fifteenth amendments to the Constitution of the United States were adopted. The true purpose of these amendments has never been in question. For example, in 1879 the United States Supreme Court in two cases made this clear.

The United States Supreme Court in the case of *Ex Parte Virginia* (100 U. S. 339, 344) declared:

> One great purpose of the amendment was to raise the colored race from that condition of inferiority and servitude in which most of them had previously stood into perfect equality of civil rights with all other persons within the jurisdiction of all the States. They were intended to take away all possibility of oppression by law because of race or color. * * *

The legislation you are considering today is necessary because the fourteenth amendment is in general terms and does not enumerate the rights its protects. As the Supreme Court has stated:

> The fourteenth amendment makes no attempt to enumerate the rights it is designed to protect. It speaks in general terms, and those are as comprehensive as possible. Its language is prohibatory; but every prohibition implies the existence of rights and immunities, prominent among which is an immunity from inequality of legal protection, either of life, liberty, or property (*Strauder* v. *West Virginia* (100 U. S. 303, 310)).

However, despite the enactment of these amendments and their high purpose of removing from American life all discrimination and distinctions based upon race and color, no one can deny that this purpose has not as yet been accomplished. The primary duty of making this purpose a reality rests upon the Federal Government and specifically Congress.

The Supreme Court in a series of recent cases has made it clear that racial distinctions should be removed from American life.

Chief Justice Stone, speaking for a Court unanimous on this point, said in *Hirabayashi* v. *United States* (320 U. S. 81, 100 (1943)):

> Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality. For that reason legislative classification or discrimination based on race alone has often been held to be a denial of equal protection.

Mr. Murphy, in a concurring opinion, felt that racial distinctions based on color and ancestry—

> are utterly inconsistent with our traditions and ideals. They are at variance with the principles for which we are now waging war. We cannot close our eyes to the fact that for centuries the Old World has been torn by racial and religious conflicts and has suffered the worst kind of anguish because of inequality of treatment for different groups. There was one law for one and a different law for another. Nothing is written more firmly into our law than the compact of the Plymouth voyagers to have just and equal laws (pp. 110–111).

The constitutionality of the existing civil-rights statutes was reaffirmed in the case of *Screws* v. *United States* (325 U. S. 91 (1945)). Further, in that case the present weaknesses of these statutes were pointed out, and the sections of this bill are in keeping with these

suggestions. There can be no question of the constitutionality of the proposed amendments to the existing civil-rights statutes.

The only important amendment to section 241 (a) is the extension of the right protected to all inhabitants rather than limiting it to citizens. Subsections (b) and (c) are necessary implementations of section 241 as it now stands.

Section 242 extends the existing prohibition to those who bring about the denial of rights, privileges, or immunities secured or protected by the laws of the United States and increases the fine and imprisonment where the wrongful conduct causes death or maiming of the person so injured.

Section 242 (a) spells out some of the privileges and immunities referred to in section 242. The necessity for specifiying these privileges and immunities was made clear by the decision in the case of Screws versus United States, supra.

Section 594 of title 18, United States Code, is amended so as to make it clear that it applies to intimidation for the purpose of interfering with the right to vote at either general, special, or primary elections. The constitutional right to vote without discrimination or intimidation has been recognized to apply to special and primary elections by the decisions in the cases of United States versus Classic and Smith versus Allwright.

Section 242 amends section 31 of title 8, United States Code, by making it clear that the provisions for civil action include those who are eligible to vote and clarifies the right protected to mean the right to vote in general, special, and primary elections.

Section 213 provides for civil, equitable, and declaratory relief to a person or persons injured as a result of action in violation of section 211. It also provides that sections 211 and 212 shall be enforceable by the Attorney General in the direct courts by actions for preventive or declaratory relief. That is a most important and essential provision, for it enables the Attorney General to proceed in a civil action in such a manner as to insure the protection of the civil rights threatened by illegal action. This section also provides that the district court concurrently with State and Territorial courts will have jurisdiction of proceedings under this section without regard to the jurisdictional amount.

Certainly there can be no question of the authority of Congress in this instance, for section 8 of article I of the Constitution of the United States specifically grants to Congress the power "to regulate commerce with foreign nations and among the several States, and with Indian tribes."

The case of *Morgan* v. *Virginia* (328 U. S. 373) recognized this principle and held inapplicable State statutes which sought to impose local segregation principles to interstate passengers on interstate carriers. In that decision the diversity of provisions for segregation in transportation among the several States was recognized; the lack of uniformity was emphasized. This provision of the bill prevents interstate carriers from imposing their own notions of racial segregation in an area in which it has already been declared unlawful for a State to impose such regulations. I cannot too strongly emphasize the need for this legislation because the enforcement of Jim Crow travel regulations, enforced under the guise of preventing friction, have as a matter of fact created more friction and violence than was

expected. These regulations of segregation destroy completely the dignity of man and the basic principles of equality in our form of government.

The National Association For the Advancement of Colored People supports S. 1725 and S. 1734 without reservation. We further suggest that in part 1, title I, of S. 1725 on the establishment of a Commission on Civil Rights, we urge the striking out of all matters beginning with section 101, page 4, line 20, through sections 102 and 103 in their entirety, and substituting therefore the language of S. 1734 beginning with section 2, line 7, page 2, through section 9, ending on page 6, line 6.

This is not a question of one section of the country against another section of the country. It is not a question of one political party against another political party, because both major parties are committed to the civil-rights program in their platforms. This bill does not raise the question of one racial or religious group against another. Rather this legislation makes a serious effort to make possible the creation of a oneness of thought, oneness of principle, and oneness of the respect for our Constitution, our statutes, and our individual human and civil rights, the very basis of our democracy.

Before Mr. Wilkins starts, I would just like to make one other mention which is not in my paper; that is, that I cannot too strongly urge the necessity for this, as I said before. At least two-thirds of my time is spent in the South and the deep South. I think that progress is being made, but I think that if we are going to make real progress the Federal Government is the agency that has to stand out and make it clear as to what these rights are. Then I think the educational program that we all want can proceed. But it cannot proceed without what we consider a minimal program; as I understand it, this bill is just a minimal program. The only final thing that we suggest in here is that we would suggest that if possible S. 1734 be made a part of the bill because there are stronger provisions in there; so that, if we are going to have the Commission, I, for one, am very interested in the whole bill; and, without any reservations whatsoever, we wholeheartedly endorse it and will do all we can to help on getting passage of it.

Senator McGRATH. Thank you.

Mr. MARSHALL. Thank you.

Senator McGRATH. Mr. Wilkins.

STATEMENT OF ROY WILKINS, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

Mr. WILKINS. Senator McGrath, Mr. Marshall took up the technical points of the bill and the legal aspects of it. This is only an attempt to outline what we consider the need for this legislation.

Senator McGRATH. You also speak for the National Association for the Advancement of Colored People?

Mr. WILKINS. That is right.

I estimate this will take abut 10 minutes of your time.

Senator McGRATH. All right. Go ahead.

Mr. WILKINS. Mr. Chairman and members of the committee, the National Association for the Advancement of Colored People, of which I have the honor to be the acting executive secretary, wishes to

express its appreciation for the opportunity to appear before you and testify in support of this legislation.

This association has a membership of 500,000 white and colored persons organized into 1,600 local units located in 45 States, the District of Columbia, and the Territory of Hawaii. It has been devoting all of its energies since its founding in 1909 to securing the civil rights of the Negro citizens of the United States; and in this effort, as the record will show, it has preserved and protected the civil rights of white Americans as well.

It is natural, therefore, that our association should be in favor of this type of legislation. American citizenship, with its rights and privileges, is cherished beyond price because of the principles of freedom and equality of the opportunity for the individual enunciated by the founders of the Nation.

It was obvious from the beginning that the mere enunciation of these principles would not suffice to secure to the individual citizen his rights under the Constitution and the Bill of Rights. As the Nation grew, our courts had to interpret the Constitution. Our legislatures had to enact laws.

There is no necessity, we are sure, to recite in lengthy detail here the reasons why it has become imperative that the Congress enact the type of civil-rights legislation embodied in S. 1725 and S. 1734. The issue of human rights has become the concern of the nations of the world. An important section of the Charter of the United Nations relates to these rights, because it has come to be recognized that deprivation or abridgment of them on any wide scale in any nation creates a condition which could strain the relations of nations and perhaps lead to war.

Human rights also have become the concern of our own country not only because of our position of leadership among the nations but because of a desire on the part of increasing millions of our citizens that every American shall be protected in the enjoyment, insofar as law can protect and guarantee, of the fundamental rights of men and citizens in a great democratic commonwealth.

The concrete expression of that concern was contained in the report of the President's Commission on Civil Rights, entitled "To Secure These Rights." Therein, as a result of public hearings, research, and exhaustive study, it was recommended that legislation of the kind under consideration by this committee be enacted by the Congress.

The Negro minority, being the largest in the country and the most easily discerned, has been the principal victim of inadequate legislation and indifferent enforcement of such laws as touched upon its condition.

Negroes have been lynched with impunity, and no law has operated to punish lynchers. We cite the March 1949 report of the Southern Regional Council, an organization of white and colored southerners with headquarters in Atlanta, Ga., which declared:

> But it should be remembered that a lynching is only an extreme example of a general lack of regard for the individual. The climate which produces lynchings is one of daily insult, intimidation, and the lesser forms of violence, directed against a whole segment of the population.

The council asserted in this report that a pattern of violence exists in the South.

In what ways, aside from lynching, has this pattern of violence operated against Negro citizens? I think Senator Wiley asked that of Mr. Marshall.

Well, in great numbers they have been denied access to the ballot box though trickery, intimidation, terror, and violence not short of murder. So recently as at the last primary election in the State of Georgia, in September 1948, Isaac Nixon, of Toombes County, was shot down and killed in his home after the polls closed simply because he exercised that day his right to vote.

In Montgomery County in the same State of Georgia, D. V. Carter, father of 10 children, was beaten up and driven from his home and the State because he advised his people to vote and carried some of them to the polls on election day. On numerous occasions prior to elections, members of the notorious Ku Klux Klan have paraded through areas inhabited by Negroes with the avowed intention of preventing them from voting.

Part 2 of title II of S. 1725, dealing with protection of the right to political participation, is therefore an immediate need.

The Negro has suffered not only deprivation of the right to vote through violence but deprivation of due process in cases involving life and liberty. Last November 20 Robert Mallard was set upon by a mob in Toombes County, Ga., and shot to death in his automobile in the presence of his wife and child. It was said that Mallard was not the "right kind of Negro" and was "too prosperous." No one has been punished for this crime.

Nineteen days ago at Irwinton, Ga., Caleb Hill was shot to death while in the custody of a law officer, and on June 14 two men suspected of his murder were freed by a grand jury on the grounds of insufficient evidence. That even so small a part of due process as the arrest of an offender is considered abnormal in the locality is indicated by the comment of Solicitor C. S. Baldwin, who is quoted by the Associated Press as saying:

Most Georgia sheriffs would have shot the Negro instead of taking him to jail.

It should be noted in passing, in connection with the cases cited above and with others not here cited, that a new procedure has developed in certain areas in the handling of lynchings and other instances of mob violence. It is now the fashion to make a quick arrest of a suspect or suspects and present the case to the grand jury. More often than not the grand jury refuses to indict. In the cases where it does indict, a trial is held and a speedy acquittal secured.

May I say that no one should be deceived into believing that an improvement has taken place over the old days when not even an arrest was made. In those days the law-enforcement officers frequently could truthfully say they were not present. The courts could say a case was not before them. Both could join in denouncing mob action. The present procedure is even more outrageous because it uses the forms of the law to place the stamp of approval on lawlessness and murder.

Violence has flared in the Birmingham, Ala., area in an effort to prevent Negroes from buying and occupying homes. Dynamite has been used freely, and mobs have threatened further violence. Having become emboldened by their attacks upon Negroes, masked mobs have now turned to threatening and attacking whites, including white

women. They have addressed themselves to the regulation of marital affairs, the care of the home and children, to private associations between individuals, and to the guests one may invite into one's home. In free America our citizens, both black and white, are subject to the whims and brutalities of storm troopers. All this and no authority, Federal or State, seemingly willing or able to call a halt.

It is glaringly evident, therefore, that part 1 of title II of S. 1725 is a necessity if law and order and the rights of individuals are to be preserved.

With respect to part 3 of title II, it is well known that Negro citizens for many years have had to accept humiliating and discriminatory second-class travel in interstate movement while paying first-class fare. The key to this inequality and robbery has been segregation, for inherent in segregation is discrimination. The myth in the phrase "separate but equal" has long ago been exposed. There can be no equality with segregation in the services and treatment of the citizen by the Nation or any subdivision thereof.

It may be asked, as it has been asked before, why the Federal Government should act in these matters. Why not leave the guaranties of civil rights to the several States? The inquiry deserves the answer.

First, Americans are citizens both of the United States and the States in which they happen to reside. As United States citizens they have certain rights which may not be denied or abridged. By their adherence to the Constitution, the several States are obligated to secure to the citizens within their borders the rights and privileges of dual citizenship. If any State fails in this duty, the rights of the United States citizens must be protected by the Government of the United States.

We cannot have nullification as an entrenched policy, or we will have in truth no union. Thus, the States which deny or abridge the rights of citizens, or aid and abet denial or abridgment by means of studied and long-standing indifference or neglect, and which opposes the entrance of the Federal Government to correct the evils, are in reality seceding from the United States and setting up a State of their own. This cannot be tolerated.

Second, certain of the States have demonstrated over a period of a half century that they are either unable or unwilling to guarantee civil rights to all citizens without distinction as to race, color, religion, or national orgin. How much longer will these millions of mistreated citizens have to wait? After 50 years a group of southerners—not New Yorkers—asserts in this year of 1949 that a "pattern of violence" exists in the South. Shall we wait another 50 years in order to be sure that the States will not act? Surely not.

In his Lincoln Memorial speech in June 1947, President Truman declared:

> We cannot wait another decade or another generation to remedy these evils. We must work as never before to cure them now. * * * We can no longer afford the luxury of a leisurely attack upon prejudice and discrimination. * * * We cannot, any longer await the growth of a will to action in the slowest State or the most-backward community.

The millions who live helplessly in humiliation and fear echo that sentiment.

Third, it is no secret that we are in a contest trying to persuade the peoples of the world that they should follow the democratic

way of life rather than the totalitarian path held out to them. This is the task of our Federal Government, which has had thrust upon it the leadership of the nations in the postwar world. It is not a simple task at best; with the constantly emerging evidences of totalitarian terrorism within our own State the difficulties are multiplied. If this be democracy, why should any people choose it as a way of life? If they do not choose it, what will become, in the not too distant day, of such freedom as we have? Will we have permitted the indulgences, the prejudices and hatreds, the sectional prides, and the myths of supremacy and superiority of the stubborn few to lose for our people the priceless liberties and the shining promise of this great Nation in the Western World? For freedom, as so often has been said, is indivisible. The rights of all must be secured, or the rights of none will be secure.

Mr. Truman said again in his 1947 speech:

> Our case for democracy should be as strong as we can make it. It should rest upon practical evidence that we have been able to put our own house in order. Our National Government must show the way.

The enactment of this legislation will help our Government show the way.

Senator McGRATH. Thank you.

Mr. WILKINS. Thank you, Senator McGrath.

Senator McGRATH. Mr. Samuel Markle.

Mr. EDELSBURG. Mr. Markle was coming from New York. His plane hasn't arrived. I wonder if you could go on with your next witness, Mr. Chairman.

Senator McGRATH. Do you have a list of witnesses that you want to present?

Mr. EDELSBURG. No; Mr. Markle would be testifying for the Anti-Defamation League of B'nai B'rith.

Senator McGRATH. Miss Marilyn Kaemmerle?

Mr. William Hall?

Those are the listed witnesses. Are there any other witnesses who wish to appear?

STATEMENT OF HERMAN EDELSBURG, WASHINGTON REPRESENTATIVE, ANTI-DEFAMATION LEAGUE OF B'NAI B'RITH

Mr. EDELSBURG. If it is agreeable to the chairman, I will make the statement for the Anti-Defamation League of B'nai B'rith.

I am Herman Edelsburg, Washington representative of the league.

The committee has already received a comprehensive and detailed analysis of S. 1725, and I shan't burden the chairman with another recital of analysis of the provisions. I shall ask leave, however, to present this formal statement in evidence and make it part of the record. If I may, I should like to make some observations about my organization and its interest in S. 1725.

Mr. YOUNG. Could you identify from whom we have received this comprehensive analysis?

Mr. EDELSBURG. From the representative of the National Association for the Advancement of Colored People.

Mr. YOUNG. You mean the statements we have just received now. I see. Thank you.

Senator McGRATH. You wish to offer for the record the statement submitted by Mr. Markle?

Mr. EDELSBURG. Yes, sir. That is right.

Senator McGRATH. Very well. It will be printed in the record at this point.

(The statement referred to follows:)

STATEMENT SUBMITTED BY SAMUEL MARKLE, NATIONAL CIVIL RIGHTS COMMITTEE, ANTI-DEFAMATION LEAGUE OF B'NAI B'RITH

I am presenting the following statement in behalf of the Anti-Defamation League of B'nai B'rith. B'nai B'rith, founded in 1843, is the oldest civic organization of American Jews. It has a membership of over 300,000 men and women. The Anti-Defamation League was organized in 1913 under the sponsorship of the parent organization in order to cope with racial and religious prejudice in the United States. The program of the league is designed to achieve the following objectives: To eliminate and counteract defamation and discrimination among the various racial, religious, and ethnic groups which comprise our American people; to counteract un-American and antidemocratic activities; to advance good will and mutual understanding among American groups; and to encourage and translate into greater effectiveness the ideals of American democracy. In other words, the ADL is an organization dedicated to putting into complete practice the basic principles of our American democracy. It is our feeling that our American system "can tolerate no restrictions upon the individual which depend upon irrelevant factors such as his race, his color, his religion or the social position to which he is born" (Report of the President's Committee on Civil Rights, p. 4). We believe that the well-being and security of all racial and religious groups in America depend upon the preservation of our basic constitutional guaranties. We recognize that any infringement of the civil rights of any group is a threat to the security of all groups.

Because of the ADL's dedication to a program of strengthening the observance of our civil rights, we hail the issuance of Executive Order 9808 on December 5, 1946. The Executive order established the Presidential committee to be known as the President's Committee on Civil Rights. The same order authorized the committee "to inquire into and to determine whether and in what respect current law-enforcement measures and the authority and means possessed by Federal, State, and local governments may be strengthened and improved to safeguard the civil rights of the people." The ADL was one of the organizations invited by the President's Committee on Civil Rights to appear and present to the Committee its suggestions as to how the civil rights embodied in our fundamental documents could best be implemented and protected. We appeared and gave testimony which included suggestions that there be established a permanent Commission on Civil Rights in the executive branch of the Government; that the Civil Rights Section of the Department of Justice be reorganized as a fully staffed division of that Department, headed by an Assistant Attorney General, and with field offices and with an assurance of adequate investigative assistance; that existing Federal legislation protecting civil rights be strengthened through amendment and supplementation; and that, wherever possible, legislation be enacted to bar discrimination based on race or religion, both in interstate commerce and in all other major areas of the community economic and social life. We also pointed out that the right of every citizen to take part in the operations of the body politics on a basis of equality without discrimination based on race and religion was fundamental to our American way of life; and that, insofar as this fundamental right was being violated, our American democracy was being endangered.

It is not surprising, in view of the foregoing, that our organization supports S. 1725, introduced by the chairman of the House Committee on the Judiciary. This bill goes a long way toward achieving the recommendations listed above, made by us to the President's Committee on Civil Rights. In these times, when democracy is engaged in a world-wide ideological struggle with the concept of totalitarianism, the enactment of a bill such as H. R. 4682 would greatly strengthen the democratic forces. Our Nation was, as this bill says, founded upon the recognition of the integrity and dignity of the individual. It is this which distinguishes us and our way of life from the totalitarian nations of the world. Hence, in these times, we must be ever vigilant against those forces of both the right and the left here in our own country which undermine that basic concept by denying the complete and full enforcement by all persons of the rights, privi-

leges, and immunities secured and protected by our Constitution and laws, and which would destroy our existing form of government through usurping the duties of our law-enforcement officers.

Part 1 of title I of S. 1725 establishes a Commission on Civil Rights in the executive branch of the Government. It provides that this Commission shall consist of five members appointed by the President, with the advice and consent of the Senate. These members are to serve on a per diem basis, receiving $50 a day in payment for each day spent for work on the Commission. It is the duty and function of the Commission to gather information concerning social and legal developments affecting the civil rights of individuals under the Constitution and laws of the United States. It is also directed to appraise the policies, practices, and enforcement program of the Federal Government with respect to civil rights, and to appraise the activities of Federal, State, and local governments and of private individuals and groups in order to determine what activities adversely affect civil rights. The Commission is also required to make an annual report to the President, containing its findings and recommendations, and is empowered to make additional reports to the President either when it deems such reports appropriate or when such reports are requested by the President. The Commission is also authorized to set up advisory committees and to consult with State and local governments and private organizations. It is directed to utilize the services of other Government agencies and private research agencies to the fullest extent possible, and all Federal agencies are directed to cooperate fully with the Commission. A full-time staff director and other necessary personnel are made available by the act to the Commission.

This portion of the bill is excellent, as far as it goes. It would seem, however, that to insure the effectiveness of the Commission it would be desirable to add to part 1 of title I language empowering the Commission to hold public hearings, to subpena witnesses and necessary documents, and to administer oaths to the witnesses it calls in such hearings.

Part 2 of title I of the bill proposes to meet the widespread demand that there be established in the Department of Justice a Civil Rights Division headed by an Assistant Attorney General. It has all along been the feeling of the ADL that enforcement of Federal civil-rights statutes suffered because such enforcement was entrusted merely to a small unit within the Criminal Division of the Department of Justice. The head of this unit could not report directly to the Attorney General, but had to deal with the Attorney General through the Assistant Attorney General in charge of the Criminal Division. Furthermore, this unit, which was of comparatively recent origin, was severely understaffed, and was handicapped by being able to operate in prosecutions throughout the country only through local United States attorneys. In many instances—especially in those areas where aggressive Federal enforcement of civil-rights statutes was most needed—this unit found itself further handicapped by having to carry on prosecutions through a local United States attorney who was hostile to its purposes. Raising the civil-rights enforcing unit of the Department of Justice to division level would go a long way toward overcoming these difficulties. It would also result in a reflection within the Department of Justice structure of the true importance of the enforcement of civil-rights legislation.

Another difficulty experienced by the Department of Justice attorneys responsible for the enforcement of the Federal civil-rights laws arose in connection with the investigations which laid the groundwork for such enforcement. It was found that, in many such cases, special training of the investigative force was needed to insure the type of investigation which would lead to the complete development of all possible aspects of the evidence necessary to achieve a successful prosecution. It was found, also, that the type of special training necessary had not been given to the FBI special agents assigned to such investigations. Hence, the ADL endorses section 112 of part 2 of title I, which provides that the personnel of the FBI shall be increased to the extent necessary to carry out effectively the duties of the Bureau with respect to the investigation of civil-rights cases, and that the Bureau shall include in the training of its agents special training aimed at insuring the best possible handling of investigations of civil-rights cases.

Part 3 of title I embodies another recommendation of the President's Committee on Civil Rights. It establishes a Joint Committee on Civil Rights to be composed of seven Members of the Senate and seven Members of the House of Representatives. This joint committee is directed to "make a continuing study of needs relating to civil rights; * * * to study means of improving responsibility for and enforcement of civil rights; and to advise with the several committees of Congress dealing with legislation relating to civil rights."

This newly established joint committee is authorized to hold hearings, to require the attendance of witnesses and the production of documents by subpena, to administer oaths, and to take testimony.

Some question might arise as to the possibility of overlapping of function between the Commission on Civil Rights in the executive department and the Joint Congressional Committee on Civil Rights. Such overlapping could, of course be avoided by the establishment of a continuous liaison between the congressional committee and the Commission. Furthermore, it would seem that the joint committee would concentrate its interest on problems which might lead to improving civil-rights legislation, while the Commission on Civil Rights would look into instances where existing laws are not adequately enforced or are even blatantly flaunted. The congressional committee would look into the possibility of extending the frontiers of existing constitutional safeguards and legislation, whereas the Commission would concentrate on examination and cooperate with the agencies enforcing Federal and State legislation protecting civil rights. In any case, in an area so important to our country as civil rights—where, in the past, there has been widespread negation of such rights, competition among several arms of the Government to ferret out abuses and to rectify wrongs would seem to us to be highly desirable.

Title II of S. 1725 contains a series of provisions intended to strengthen the protection of every individual's right to liberty, security, citizenship, and its privileges. Soon after the Civil War, in 1870, the Congress enacted a series of statutes intended for use against those elements who were seeking to hold the recently freed slaves in continued bondage. One of these statutes is embodied in what is now section 241 of title 18 of the United States Code. The section as it now stands provides that, if two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States or because of his having so exercised the same, or if two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured, they shall be fined not more than $5,000 or imprisoned not more than 10 years, or both. This statute was enacted as a result of the activity of the KKK.

A careful examination of the statute shows a number of substantial limitations. Because it is a conspiracy statute it cannot be violated by one person acting alone. It limits its protection to citizens of the United States and is not applicable to protect the rights of aliens. The purpose of the conspiracy outlawed must be the invasion of rights or privileges "secured by the Constitution or laws of the United States." Through the years, the Federal courts have interpreted this statute so as to confine the term "rights and privileges secured by the Constitution or laws of the United States" to a narrow area. The courts have refused to hold that national citizenship involves all the fundamental rights of citizenship guaranteed by both the State and Federal governments. Thus, in the *Cruikshank* case (92 U. S. 542), decided in 1875, the Supreme Court held that the statute was not applicable to a group of private individuals who had prevented Negroes from attending meetings. In holding the indictment insufficient, the Court stated that the section would have applied only if the meeting of the Negroes had been an assembly for the purpose of petitioning Congress for a redress of grievances, or for anything else connected with the powers or duties of the National Government. Since then, the Supreme Court has consistently shown reluctance to expand the applicability of section 241.

Part 1 of title II of S. 1725 does what can be constitutionally done to improve and strengthen section 241. It extends the bans contained in section 241 to single persons acting alone. It increases the punishment which may be assessed against violators in cases where the illegal action under the section results in the death or maiming of the victim. It authorizes a civil suit for damages by persons injured as a result of the violation of section 241 directed against the person or persons who were responsible for the violation of the section. Another change made is the extension of the coverage of the act so that it protects the rights not just of citizens of the United States but of "any inhabitant of any State, Territory, or district" of the United States. Finally, in an effort to resolve the ambiguity which now exists as to precisely which rights are rights protected by the Constitution and laws of the United States, part 1 of title II lists a series of six specific rights which are covered by section 241. Among the rights listed are the right to be immune from fines or deprivation of property without due process of law; the right to be immune from punishment for crimes except after a fair trial and upon conviction and sentence pursuant to due process of law;

the right to be immune from physical violence applied to extract testimony or a confession; the right to be free of illegal restraint of person; the right to protection of person or property without discrimination because of race, color, religion, or national origin; and the right to vote as protected by Federal law. It is noteworthy that, in listing these specific rights, the section specifies that the listing is not exclusive and may include other rights not specifically stated.

Another law passed at about the same time as section 241 of title 18 is contained in section 242 of the same title. This latter section, which was originally part of the Civil Rights Act of 1866, was adopted primarily in order to provide more adequate protection of the Negro race and their civil rights. It is directed only against officers or persons acting under color of authority. This statute also has been so interpreted by the Supreme Court as to narrow its effect and coverage. For example, in the case of *Screws* v. *U. S.*, decided in 1945 (325 U. S. 91), the Supreme Court, in reversing the conviction under section 242 of a southern sheriff who beat a Negro prisoner until he died, held that the Federal Government, to support a conviction under the statute, must prove a specific intent on the part of the defendant to deprive the victim of "rights, privileges, or immunities secured or protected" by the fourteenth amendment. Part 1 of title II of H. R. 4682 proposes to amend section 242 to increase the maximum penalty from 1 year in prison to 20 years in prison, and from $1,000 fine to $10,000 fine, if the victim of the deprivation of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States either dies or is maimed as a result of that deprivation. In addition, the section spelling out the six specific rights, privileges, and immunities which are included within the coverage of section 241 is also made applicable to the rights mentioned in section 242.

The third provision of part 1 of title II extends the coverage of section 1583 of title 18, one of the antipeonage statutes now contained in our Federal criminal law. Section 1583 is directed against any effort to entice a person into slavery. It provides that whoever kidnaps or carries away any other person with the intent that such other person be sold into involuntary servitude or held as a slave, or whoever entices, persuades, or induces any other person to go on board any vessel or to any other place with the intent that he shall be maimed or held as a slave or sent out of the country to be so made or held, shall be fined not more than $5,000 or imprisoned not more than 5 years, or both. The proposed amendment would expand the coverage of the latter provision of the section to make it applicable not only to the vessel but to any other means of transportation, and to make it clear that the crime is committed even when the person enticed is transported to locations beyond the United States.

Part 2 of title II of S. 1725 is legislation which, in our opinion, will do as much to protect the right of American citizens to vote in elections for Federal officers as any anti-poll-tax legislation.

Section 594 of title 18 now makes intimidation of voters in Federal elections a crime punishable by a fine of $1,000 and imprisonment for 1 year, or both. The specific language of section 594 makes it applicable to "any election held solely or in part for the purpose of electing such candidate." Part 2 of title II of the bill under consideration would amend section 594 to specify that it is applicable to any "general, special, or primary election" held for the purpose in whole or in part, of selecting or electing any candidate for Federal office. Thus, this amendment to section 594 would make it clear that the section is applicable not only to the actual election but to the primary elections. This is in recognition of the fact that, in many parts of our country, victory in the primary is tantamount to election to office, and that, hence, control of the primaries is control of the election itself. Such a clarification of section 594 has long been necessary.

Under section 31 of title 18 of the United States Code, all citizens in the United States who are otherwise qualified by law to vote in any election either for Federal, State, or local office, are entitled to vote at all elections, without distinction because of race, color, or previous condition of servitude, notwithstanding the existence of any constitution, law, custom, usage, or regulation of any State or Territory to the contrary. Part 2 of title II of the proposed bill under consideration would amend this section for two purposes. First, it would extend the protection of the section to all those eligible by law to vote and would make the protection applicable to their right to qualify to vote. Secondly, it would specify that the right to qualify to vote, as well as the right to vote in every election, whether it be a general, special, or primary election, is a right protected by the Federal Constitution and laws under section 242 of title 18. What this amendment does is to recognize that one of the techniques used to deny the franchise to persons otherwise eligible, is to prevent them from qualifying to vote by preventing them from registering or establishing their residen-

tial qualifications or—where the poll tax is still a prerequisite to the right to vote—preventing them from paying their poll tax.

The last provision of part 2 of title II establishes two new sections to be used in case of interference with a person's right to qualify to vote or to vote. This final section permits a civil suit to be brought against any person or persons violating the provisions of section 594 as amended, either for damages or for a court order enjoining the denial of the right to vote or to qualify to vote. The same section also permits the Attorney General of the United States to bring an action for an injunction against any officials denying any citizen his right to vote or to qualify to vote in accordance with the provisions of the foregoing sections. It is provided that both the Federal district courts and State and Territorial courts shall have concurrent jurisdiction over all civil proceeding either for damages or for preventive, declaratory, or other relief against violations of the first two sections of part 2 of title II.

The third and last part of title II of section 1725 contains two sections directed against discrimination or segregation in interstate transportation. The first section declares that all persons traveling within the jurisdiction of the United States shall be entitled to full and equal enjoyment of the accommodations of any public conveyance operated by a common carrier engaged in interstate or foreign commerce, subject only to conditions and regulations applicable to all, without discrimination or segregation because of race, color, religion, or national origin. The second paragraph of the section provides that any person who attempts to deny to any other person the full and equal enjoyment of any such accommodation because of race, color, religion, or national origin shall be guilty of a misdemeanor and upon conviction be subject to a fine of up to $1,000 as well as to suit by the injured person for damages or for preventive or declaratory relief. The same paragraph provides that suits under this section may be brought in any district court of the United States, without regard to the sum or value of the matter in controversy. The second section of part 3 makes it unlawful for any common carrier engaged in interstate or foreign commerce, or any employee thereof, to segregate or otherwise discriminate against passengers using any public conveyance or facility of such carrier because of the race, color, religion, or national origin of such passengers. The same section also provides that any such carrier or officer, agent, or employee of such a carrier who segregates or attempts to segregate such passengers because of their race, color, religion, or national origin shall be guilty of a misdemeanor punishable by a fine of up to $1,000 and shall also be subject to civil suit for damages or for injunctive relief.

The provisions of part 2 of title II of section 1725 are long overdue. It has long been a blot on the record of our democracy that our Federal Government permits the maintenance of Jim Crow practices in interstate commerce. Insofar as we continue such segregation we are going contra to all the basic tenets of our American system of democracy. When the Federal Government abdicated its control over interstate commerce and permitted the States to institute requirements of racial segregation in common carriers passing through their territory and engaged in interstate commerce, the Federal Government took upon itself the blame for this denial of human rights—for this establishment of classes of citizenship. In view of the Federal Government's international commitments as embodied in the Declaration of Human Rights and the Act of Chapultepec, it is necessary that the Government reassert its full control of interstate commerce, and use that control to bar racial segregation in the area of interstate and foreign commerce, and to lead those States which still require segregation forward on the road to democracy. So long as the Federal Government permits racial segregation in areas under its jurisdiction, it will find its campaign to extend democracy to backward areas throughout the world severely impeded. Ours is an international obligation. Let us not shirk it.

The report of the President's Committee on Civil Rights was an epoch-making document. Its recommendations are a blueprint for completing the noble democratic structure which our founding fathers envisaged. It is well that we should initiate as quickly as possible the passage of legislation intended to lift the recommendations of that report from the realm of theoretical discussion into the area of actual practice. Passage of H. R. 4682 will be one step forward toward that goal.

Senator McGRATH. You may make your statement with reference to the organization and then address yourself to the bill.

Mr. EDELSBURG. B'nai Brith was founded in 1843, and is the oldest civic organization of American Jews. In 1913 it formed the Anti-

Defamation League, for the specific purpose of counteracting racial and religious bigotry of all kinds and for the positive purpose of supporting programs designed to translate into greater effectiveness the promise of freedom and equality of American democracy.

The organization supports S. 1725 as being the best legislative formula for translating into living reality that portion of the Report of the President's Committee on Civil Rights which dealt with legislative proposals other than the three classic measures, FEPC, anti poll tax, and antilynching legislation.

In a sense there is much in S. 1725 which does more than complement the provisions of the three classic civil rights measures. I think it is particularly important in the field of education, which inevitably must be relied on to buttress any specific civil rights program which moves into a new field of social relationships.

I have in mind particularly the provisions which call for the establishment of an executive commission to continuously survey and study the problem of civil rights, not merely on the legislative level, but on the actual practicing level. I have in mind also the provisions for a joint Senate-House committee to survey continuously the legislative problems of civil rights programs in this country.

I think S. 1725 performs a very constructive service also, in that it takes the two civil rights acts provisions which have been fairly dormant since reconstruction days and really puts teeth into them. That feature of S. 1725 which spells out Federal privileges and immunities will for the first time insure that the Supreme Court will speak with a clear and certain voice in defending Federal rights against infringement or interference from any source.

But to me one of the cardinal features of this bill is the protection of voting rights, granted through the provision which would give to the Attorney General power to secure from a Federal court an injunction preventing interference with the right to vote on the ground of race, color, or national origin. That feature of the bill, it seems to me, would do more really to protect the right to vote, the basic political right on which so many other rights are premised, than any piece of legislation which is now in the hopper of the House and the Senate.

The fact of Federal intervention has been a great educational force, even when the laws have been as loosely drafted as they are today on the statute books. When you give specific power to the Attorney General to move into a community which has threatened to prevent Negroes from exercising their right to vote, you have done more than any bill now before the Congress to make certain that Negroes will have the right to vote.

The organization supports the omnibus bill, S. 1725, not as a matter of form, not because it has become the fashionably liberal thing to do, but because we think it is a very well reasoned and constructive and essential part of the civil rights program. We hope the Senate will give it immediate consideration.

Thank you.

Senator McGRATH. Thank you very much.

Are there any other witnesses to appear?

Are there any witnesses appearing in opposition to the legislation?

Then we will recess until next Wednesday at 10 a. m., at which time the hearings will be closed.

(Whereupon, at 11:28 a. m., the committee recessed, to reconvene at 10:30 a. m., Wednesday, June 22, 1949.)

CIVIL RIGHTS

WEDNESDAY, JUNE 22, 1949

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

The subcommittee convened at 10:30 a. m., pursuant to recess, in room 424, Senate Office Building, Senator J. Howard McGrath, chairman of the subcommittee, presiding.

Present: Senators McGrath and Eastland.

Also present: Robert B. Young, professional staff member.

Senator McGRATH. The hearing will be in order.

This is a continuation of the hearings on S. 1725 and S. 1734, commonly known as the omnibus civil rights bills.

We have two witnesses scheduled to be heard this morning. The first witnes is Mr. Will Maslow, general counsel, American Jewish Congress.

You may proceed, Mr. Maslow.

STATEMENT OF WILL MASLOW, GENERAL COUNSEL, AMERICAN JEWISH CONGRESS

Mr. MASLOW. My name is Will Maslow. I am general counsel of the American Jewish Congress.

The American Jewish Congress is a national organization which has been in existence since 1916. Among its purposes are the extension and safeguarding of the civil rights of Americans in our country.

My organization endorses wholeheartedly the bill S. 1725 and urges its speedy reporting out by this committee. We believe that this is one of the most important civil rights measures which has been introduced in both Houses, and in some ways it is more important than the measures which deal with substantive rights.

Our experience has been that unless adequate enforcement machinery is provided, many of these rights become dead letters.

We believe, for example, that an antilynching bill will mean little in this country unless the existing civil rights machinery of the Federal Government is strengthened.

Senator EASTLAND. How do antilynching bills mean anything when there is no lynching?

Mr. MASLOW. I read in the newspaper once several weeks ago, Senator, that there was a lynching.

Senator EASTLAND. How many is it? It is an average of one or two a year.

Mr. MASLOW. We are glad to say they average one or two a year, but there are, according to the reports of the Tuskegee Institute, and others, several hundreds which are prevented.

Senator EASTLAND. They are prevented, so that as a crime that has practically disappeared. Then they are prevented by the States, are they not, and the local communities where they occur?

Mr. MASLOW. Lynching, sir, is only a symptom.

Senator EASTLAND. I want you to answer my question. The ones that are prevented are prevented by the States, are they not?

Mr. MASLOW. They are, sir.

Senator EASTLAND. The communities in which they occur prevent them; is that right?

Mr. MASLOW. That is right.

Senator EASTLAND. They prevent several hundred a year; is that correct?

Mr. MASLOW. Yes.

Senator EASTLAND. That being true, why should the Federal Government enter that field?

Mr. MASLOW. Because, sir, in addition to the one or two lynchings a year, there are scores of other instances of violence, maimings, other acts of brutality.

Senator EASTLAND. Where is that?

Mr. MASLOW. Throughout the South.

Senator EASTLAND. Where? Name some instances.

Senator MCGRATH. It happened in Alabama this week. People were taken out of their homes and were beaten up.

Senator EASTLAND. Would it apply to those occurrences?

Senator MCGRATH. I am not sure that the definition of antilynching legislation covers cases of that kind where they fail to get protection.

Senator EASTLAND. The statement the witness made was that there are many kinds of violence. I challenge the accuracy of that statement, and I would like to know the proof.

Mr. MASLOW. I have just been reading the newspapers about a great deal of it.

Senator EASTLAND. What newspapers have you been reading?

Mr. MASLOW. The New York Times.

Senator EASTLAND. Where does the New York Times report that? Give us some answer.

Mr. MASLOW. There has been reported in the New York Times that in Alabama and Georgia bands of the Ku Klux Klan have been attempting to commit violence against white persons. That is an act of lynching, sir, just as much as when it involves Negroes.

Senator EASTLAND. No bill would apply to that.

Of course, the New York Times is full of those occurrences in the city of New York, too, is it not?

Mr. MASLOW. There have been some instances of police brutality against Negroes in New York City.

Senator EASTLAND. There have been race riots in New York, and there have been more people killed in the past 10 years there than have been lynched in this country.

Mr. MASLOW. There have been more killed in automobile accidents than by lynching, as well.

Senator EASTLAND. Can you please answer my question?

There have been race riots where men have been killed by white people because of their race; is that right?

Mr. MASLOW. There was a riot in Harlem, I believe, in 1943.

Senator EASTLAND. How many people were killed?

Mr. MASLOW. I am not sure that any were killed.

Senator EASTLAND. You are not sure that any were killed, are you?

Mr. MASLOW, No. But there was a great deal of violence and looting, for which the city is ashamed.

Senator EASTLAND. Over 20 people were murdered.

Mr. MASLOW. Not in 1943, sir.

Senator EASTLAND. Yes, sir; that is true.

Why do you not advocate the Federal Government to go into that?

Mr. MASLOW. That bill would apply to New York State.

Senator EASTLAND. It would not apply to race riots in New York State.

Mr. MASLOW. It would apply to New York, and we would like it to apply to every State in the Union.

Senator EASTLAND. There is no bill which applies to New York, and your organization has not been down advocating any.

Mr. MASLOW. We are now advocating a bill which applies to every State in the Union.

Lynching, however, is only one problem of the entire civil-rights problem. Happily, it is not the worst problem. There are problems of denial of suffrage; there are problems of denial of the security of the person; there are problems of denial of equal facilities of the State to its citizens, in the North and in the South.

We are not suggesting that this is a measure directed at the South alone; it should not be.

We do suggest, however, that this is an affirmative way to strengthen our civil-rights machinery.

Senator EASTLAND. You say in your testimony that there have been hundreds of cases of assault and brutality in the South where a man did not lose his life. I want to know what the basis is for that statement.

I agree with you about the Ku Klux Klan. You have mentioned two instances that appeared recently in the papers. I think I would like to know the basis for your statement.

Mr. MASLOW. Would you like me, sir, after this hearing is over, to present you with a memorandum with authentic cases of brutality?

Senator EASTLAND. If they have happened, you can make them now, of course, and make a statement before this committee of Congress.

Mr. MASLOW. The National Association for the Advancement of Colored People and the American Jewish Congress recently published a balance sheet of civil rights in this country, which we are about to distribute.

Senator EASTLAND. Just name some of those instances to which you refer.

Of course, you should be able to name them.

Mr. MASLOW. I just cannot name them at this moment, sir.

Senator EASTLAND. That is all right. You may proceed with your statement.

Mr. MASLOW. I would like to point out that this comprehensive Civil Rights Act of 1949 does not raise any question as to States' rights, because in general the bill deals with matters of procedure rather than the creating substance of rights.

In addition, each of the six portions of the bill has been specifically recommended by the President's Committee on Civil Rights.

The major recommendation, I believe, is that there be created a permanent commission which would yearly assess our progress in civil rights and would enable, therefore, the Government to maintain a searchlight over the entire country and be able to tell our citizens in which direction we are heading.

That Commission would presumably furnish, through an annual report or otherwise, a balance sheet of our civil rights, and we would then have an authoritative and documented account.

So the questions that arose between Senator Eastland and myself could be disposed of authoritatively. If it had been shown that the problem of lynching has happily disappeared and that every person in this country, regardless of his race or his color, then we would not need legislation.

But it is one function of that type of commission to assess the facts.

Secondly, and equally important, this bill proposes strengthening of the civil-rights machinery in the Department of Justice. The Civil Rights Section, which was first established by Attorney General Murphy, now Supreme Court Justice, consists of sever lawyers.

I have always thought that this represented a mere token enforcement on the part of the Federal Government. Obviously, seven lawyers in Washington are not going to begin to handle the problem of denial of civil rights throughout the country.

One of the best ways to increase the stature of that section is to transform it into a division and to have it headed by an Assistant Attorney General, confirmed by the United States Senate.

In addition, that section would be able to establish regional offices throughout the country, in the leading centers of population, that its investigation would not be by correspondence, but there would be field investigators on the spot to prevent lynchings and to prevent other denials of civil rights.

The third provision in the bill is that which creates a joint congressional Committee on Civil Rights. Its function is obvious. It would be a centralized spot in the legislative branch of the Government which would maintain periodic supervision of the whole problem and thus furnish the material on the basis of which legislation can be developed.

The second portion of the bill is an attempt to perfect by amendments some of our existing civil-rights laws.

As you know, these civil-rights statutes go back to 1866. In the course of these 80 years, many have been amended. Some of them have been whittled out of existence by Supreme Court decisions. Some have been repealed. So that today we have a hodgepodge of statutes.

It is the purpose of the second portion of this act to perfect the statutes.

Essentially they would do that in the following way: First of all, they would extend the protection of the laws not only to citizens of the United States but to inhabitants.

Secondly, they would allow persons who had been injured themselves to sue for violation of civil rights instead of merely relying upon criminal prosecution.

Thirdly, in certain cases they would increase the penalty.

You will recall when we had this famous case of this sheriff in Georgia, named Screws, who had been convicted in the lower courts

of the murder of a prisoner in his custody. The maximum sentence available was 1 year for a murder. That was a case which the State officers had refused to prosecute.

Lastly, the bill spells out in detail which are the Federal civil rights that are protected.

You will recall, when the Screws decision came before the Supreme Court, the Supreme Court found it difficult to enforce the statute because of the vagueness and the uncertainty as to what was a Federal civil right.

This bill attempts to cure some of that ambiguity by listing certain of the Federal rights.

Incidentally, this bill is entirely a Federal measure. It protects only the rights guaranteed by the Constitution or our Federal statutes. It does not protect State civil rights.

The next portion of the title is the one which protects the right to suffrage. Our rights to suffrage are based on two organic acts. One is the Constitution itself, which protects the right to vote in Federal elections, general and primaries.

The second is the fifteenth amendment, which prevents any State from interfering with a person's right to vote because of his race or color.

What these bills do is to perfect this protection.

Senator EASTLAND. Let me ask you this question——

Mr. MASLOW. Go ahead, sir.

Senator EASTLAND. Is there a Federal right to vote?

Mr. MASLOW. I would say that our Constitution is a mockery if there were not a Federal right to vote.

Senator EASTLAND. Does not it guarantee that a person should not be denied a vote because of race, color, and previous condition of servitude?

Mr. MASLOW. If that were so, there would have been no right to vote in the United States before the fifteenth amendment that was adopted, and that certainly could not be true.

Senator EASTLAND. Are they not fixed by the States?

Mr. MASLOW. But no State can deny the right to vote to a person.

Senator EASTLAND. Is that because of race or color?

Mr. MASLOW. But they did not have the right to deny them before 1868, and the Supreme Court has so held.

Senator EASTLAND. They did deny them the right to vote before 1868. Groups in this country, for instance in the State of New York, denied the right to vote to your religion a hundred years ago. Suffrage can be expanded or limited by the State as long as there is no denial because of race, color, or previous condition of servitude.

Mr. MASLOW. I would disagree with you, Senator; and I would like to say the Supreme Court has held that there is a Federal right to vote in Federal elections, in Federal primaries, a right which the Federal Government can protect.

That is why, for example, when we had these instances of other interferences and having nothing at all to do with race, color, or creed, the Federal Government has been able to enact the Corrupt Practices Act and otherwise regulate the right to vote in Federal elections.

Senator EASTLAND. To regulate the right to vote and to grant the right to vote are entirely different things.

For instance, some States say that a person who is 18 years of age or older can vote in Federal elections.

Mr. MASLOW. That is right.

Senator EASTLAND. Other States fix the age at 21. Every State fixes the qualifications of those who can vote for a Member of Congress or for a Senator, as well as in the State elections.

In a presidential election the machinery is set up entirely by the State. In fact, the State legislature can appoint electors.

Mr. MASLOW. But, if there were an effort to interfere corruptly with a Federal election, the Federal Government has exercised by statute.

Senator EASTLAND. Of course, if somebody attempts to steal an election, the Federal Government can protect it.

Mr. MASLOW. That is all I am saying, sir.

Senator EASTLAND. I am sorry if I misunderstood you. I thought you said that there was a Federal right to vote.

Mr. MASLOW. Perhaps I was not as precise, then, as I should have been. We do not have to argue that point. All that this bill does is that it protects the Federal right, it protects the right to vote in Federal elections from interference on any grounds, corruption, race, color, and many others.

Senator EASTLAND. What others are there?

Mr. MASLOW. Well, we have sometimes attempts to stuff ballot boxes.

Senator EASTLAND. That is corruption.

Mr. MASLOW. We have sometimes actual efforts by physical violence to prevent elections.

Senator EASTLAND. That is force. But that is for those who are qualified.

Mr. MASLOW. That is right, sir.

The second portion of the statute attempts to spell out and make more precise the general prohibitions of the fifteenth amendment, which would prevent any State from denying the person's right to vote because of race or color. This bill now adds religion to the national origin to make it uniform.

One other thing which we regard as of importance in this comprehensive civil rights act is the provision allowing the Attorney General to seek by injunctions to prevent violation of civil rights. It is not enough merely to prosecute criminally.

The real function of the Civil Rights Division should be to prevent violations of civil rights.

Unhappily, most of the great victories which have been won in the Supreme Court in the last decade, those decisions which abolish the white primary, which stopped enforcement of restrictive covenants, which eliminated the practice of excluding Negroes from State-supported universities, have been decisions brought by private groups, like the NAACP, or the Japanese-American Citizens League, or the American Civil Liberties Union, or Jehovah's Witnesses.

For the first time, statutory authority is being provided by the Attorney General so that he can properly exercise that function.

The next and last portion of that bill is that which relates to segregation and interstate commerce. I think that this is perhaps the only part of the bill which deals with substantive rights rather than with procedures.

Since the decision in Morgan against the United States, it is unconstitutional by State action to require segregation in interstate commerce.

What has happened, however, is that, since that time, many carriers, by private regulation, have adopted segregation rules.

This bill now seeks to outlaw segregation, whether enabled by State action or enforced by private carriers, and so on.

Senator EASTLAND. Can a private carrier segregate people in interstate commerce?

Mr. MASLOW. Today?

Senator EASTLAND. Yes; by regulation of the carrier?

Mr. MASLOW. They are doing that today, sir.

Senator EASTLAND. Are they?

Mr. MASLOW. Yes.

Senator EASTLAND. What are they worth?

Mr. MASLOW. For example, the regulation that requires a Negro to sit in a special portion of the Pullman dining car is a regulation imposed by carriers in the South.

Senator EASTLAND. I say: What is it worth? Suppose a Negro did not want to sit in that space, what would happen?

Mr. MASLOW. If he did not want to sit in the space reserved for Negroes, he would not be allowed to sit in any other space unless he was going to have his meal brought to him.

Senator EASTLAND. Can a carrier enforce that regulation in the court?

Mr. MASLOW. They have enforced it in the courts. There is a case now pending in the United States Supreme Court known as Henderson against the ICC, wherein a Negro offered a service in a segregated section refused it. He brought suit before the ICC.

The ICC upheld the carrier's rule. He then appealed, he petitioned the Supreme Court to hear the case, and the Supreme Court, sir, has granted certiorari and the case will be argued this fall.

That would decide the question as to whether an interstate carrier, in the absence of statute, may segregate.

The purpose of this bill is to remove any doubts and to absolutely forbid any segregation in interstate commerce.

I was saying that the constitutional basis for segregation really goes back to the famous decision of Pletzi against Ferguson in 1896.

Senator MCGRATH. The fact of the matter is that the opinions of the Supreme Court, like the provisions of the Constitution, are hardly self-enforceable. You have to have statutory rules and statutory backing in order to give reality to these opinions.

Mr. MASLOW. Fortunately, the opinions at the moment are on the other side. Today the law is, at least, according to the Pletzi against Ferguson, which has never been overruled, that segregation on interstate carriers is valid and not in violation of due process.

Senator MCGRATH. How do you reconcile what you have now said with the Morgan decision?

Mr. MASLOW. The Morgan decision went off on the ground that compelling persons to change seats on a bus was a burden on interstate commerce because it required shifting rules and so on. There may not be that burden, for example, in a dining car.

I presume the plaintiffs in this Henderson case that I mentioned will contend there is a burden. But the Pletzi case did not discuss the question of burden in interstate commerce. It merely held that segregation of Negroes on railroad cars does not impute any inferiority to them if the facilities are equal.

I think the events of the last 50 years have shown that that court was tragically wrong. The purpose of segregation is to place the Negro in an inferior role.

I think perhaps the best indication of that is that if a white man by mistake is compelled to ride in a Negro portion of a train in the South, he can sue for damages, on the theory that he has been injured.

Now, if these facilities were absolutely equal and there was no social stigma to be forced to ride in the Negro portion of a train, there would be no grounds for award. Yet the decisions of the southern courts—and I cite them in my memorandum—award damages to white men who have been forced to ride in Negro portions of the car.

I think those decisions are correct. The decisions go off on the same basis that to call a white man a Negro is a libel per se, just as though you were to call him a Communist or to call him a murderer. Calling a white man a Negro in the South does injure his social standing and may affect his business and professional relationships.

Senator EASTLAND. That is true in the North; is it not?

Mr. MASLOW. To a certain extent; yes, sir. I say they are right.

Senator EASTLAND. It is actionable in the North, as well as in the South.

Mr. MASLOW. I do not disagree with you, sir. I just do not know of any more decisions.

But I would think in most cases calling a white man a Negro does impute inferiority to him. That is why if a Negro is segregated, in effect he is given an inferior station and he is humiliated. That is why, even though the physical facilities may be equal, though often they are not, there is a humiliation and a damage and an injury which this section seeks to prevent.

That is why we believe that this comprehensive bill, surveying the whole scene, is a temperate and a moderate bill and would be a magnificent step forward for the Federal Government. That is why we urge its enactment.

Senator MCGRATH. How many members are there in your organization?

Mr. MASLOW. We have approximately a hundred thousand direct members, and we have a great number of affiliated organizations which have large memberships in turn.

Senator MCGRATH. Do you operate all over the United States?

Mr. MASLOW. That is right.

Senator MCGRATH. Is that in Jewish communities?

Mr. MASLOW. We try to have branches wherever there is a Jewish community.

Rabbi Stephen S. Wise was our president until his death 2 months ago.

Senator EASTLAND. I have no further questions.

Senator MCGRATH. Thank you very much, sir.

We will now hear Mr. Herbert M. Levy.

Mr. Levy is the staff counsel of the American Civil Liberties Union.

STATEMENT OF HERBERT M. LEVY, STAFF COUNSEL, AMERICAN CIVIL LIBERTIES UNION

Mr. LEVY. I am appearing on behalf of the American Civil Liberties Union in support of S. 1725, the omnibus proposed Civil Rights Act of 1949.

We feel that the passage of this bill would be the strongest possible blow that Congress could strike against communism, or the most effective propaganda of the Communists is that, while this country prates about freedom and civil liberties, it does nothing about them. Communists at home and abroad, who are in favor of civil liberties for themselves and no one else, would be rudely shaken by a congressional act to strengthen the civil liberties of all.

We feel that it is time for America to prove that she believes in freedom and that she will do something about it.

The American Civil Liberties Union, which is the organization that I represent, has a history of some 30 years of defense of civil rights of all, be they white, black, Ku Klux Klan members, anti-Ku Klux Klan members, Republicans, Democrats, Fascists, and Communists.

We feel that what we endeavor to do is to defend the Constitution on guaranties of freedom which are given, of course, by our Constitution.

We also try to broaden those freedoms to make what I should choose to call a fifth freedom, a freedom from being pushed around.

We feel that in this case, the bill, after the listing of certain sound findings, does very soundly attempt to strengthen the civil rights of the people as guaranteed by the Constitution, and also by the United Nations Charter.

The bill provides in title I the machinery for such strengthening.

Part 1 of title I would create a permanent Commission on Civil Rights in the executive branch of the Government, whose function it would be to gather information on civil liberties, appraise governmental and private action in connection therewith, and annually report its findings and recommendations.

The importance of such a Commission cannot be overemphasized. The American Civil Liberties Union feels that last year's Presidentially appointed ad hoc Committee on Civil Rights, both through its study of civil liberties problems and the tremendous educational value of its findings and recommendations, contributed invaluably toward the strengthening of our constitutional guaranties of freedom.

There can be little doubt of the urgent desirability of having such a Commission on a permanent basis.

Part 2 of title I provides for the reorganization and strengthening of the civil-rights activities of the Department of Justice.

The need for such a reorganization is patent to anyone with knowledge of the Department's past activities.

Handicapped by insufficient funds and a scarcity of personnel, the Department has rarely ever been able to initiate civil-rights prosecutions. The strengthening of that Department is long overdue.

The bill would set up, or, rather, would add an additional Assistant Attorney General, who would have an entire division working under him, devoted to the enforcement of civil rights.

In the past we have found, from our own experience, that the civil rights department, as it now exists, has great difficulty in handling

various cases which we bring to their attention. Although they know us and we know them, and we know they do a fine job with limited facilities, we often find that it takes as much as 2 or 3 months before a letter of ours bringing a particular matter to their attention is even acknowledged, and at that point the investigation is usually not even completed.

We very frequently have to wait many months before an investigation is completed and final results are apparent.

Part 3 of title I wisely supplements the Commission's activities by providing for a congressional Joint Committee on Civil Rights to study the field with the view toward legislating to improve respect for an enforcement of civil rights.

The committee is given subpena powers. The establishment of such a committee to investigate ways, to further our freedoms of speech, religion, and press, is a necessary counterbalance to the House Un-American Activities Committee, whose inevitable tendency has been to restrict those very same freedoms.

We feel that the need for such a joint committee is especially apparent when we see what has happened in the past few days with regard to the Un-American Activities Committee making a request to the colloges for a list of books which are used as textbooks in those colleges.

That, of course, is censorship, and censorship with a vengeance. When such an apparent existence of flagrant violation of freedom of speech appears, I should think it would be the job of the joint congressional committee to investigate the extent of censorship, both public and private, in the school—private, secondary, colleges—of our Nation.

I should think, for example, that the committee would want to inquire as to the extent to which the activities of Congressman Ober, of the State of Maryland, are duplicated on a Nation-wide scale.

Congressman Ober recently wrote to the president of Harvard, asking him to discharge or severely consure two professors because of their political activities—in the case of one, because he happened to speak against the Ober bill at a meeting of the Progressive Party in Maryland.

I should think that this joint committee might want to undertake an investigation to see how many alumni of various colleges attach strings to their gifts; how many of them say, "We will not give money to the college unless we are sure that a certain number of Jews or Negroes will be admitted"; how many of them say, "I do not like this textbook, and if this textbook is not gotten rid of I do not donate the money"; and how many of them say, "Get rid of this professor or I won't give any money"? And Congressman Ober did that.

The substantive provisions of the bill are to be found in title II, part I, thereof, consisting of amendments and supplements to existing civil-rights statutes found in the Criminal Code, title XVIII.

We do have a rather good civil-rights law at the present time as far as substance goes. The law is to be found scattered in many places in the statute books. It is not cohesively tied together and this bill would do a good job on that.

The main fault that we find with the bill is that, whereas the substantive declarations are fine and high-minded, there is no practical way to implement these high-sounding declarations.

I will touch on that more exhaustively in a few minutes.

I should merely like to mention at this point that we feel that the main difficulty is to get these statutes to work—to plug up the loopholes and find ways to enforce them.

Section 241 (a) of the Criminal Code now provides that—

> If two or more persons conspire to injure, or press, 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—

that such conduct is criminal.

Section 201 of the proposed act would change the word "citizen" to "inhabitant of any State, Territory, or district," and thus desirably extend the classes of persons protected and make the language of this section coincide with that of section 242.

I should like to point out parenthetically that, while the desirability of such an extension is obvious, it would be unfortunate if that attempt to widen the applicability of the bill resulted in some cases in its narrowing.

Thus, it is conceivable that one who is a citizen but not an inhabitant of any State, Territory, or district might be deprived of his rights, and the bill would unfortunately remove his protection.

The bill can be easily changed to remedy this by changing lines 17 and 18 of page 10 of the House draft to read: "Any citizen or inhabitant of any State, Territory, or district."

Senator McGRATH. Can you give us an example of how a person could be a citizen of the United States and not a resident and have the statute apply to him? That would imply that he would be out of the country.

The statute does not extend beyond the borders of the United States.

Mr. LEVY. Yes. He might be out of the country and still be a citizen, and he might also be sojourning in the United States, even though he would have his permanent residence elsewhere.

Senator McGRATH. He would then be a resident of the United States, would he not?

Mr. LEVY. I do not think he would. That would certainly be a question open to much doubt in any case as to where his residence was.

Senator McGRATH. He was physically present here when the violation occurred. This word "residence" does not contemplate that you have to be here for 6 months. If I move from Washington, D. C., down to Birmingham, Ala., and I am there 10 minutes, and some civil right of mine is violated, I certainly am covered by this statute. I am residing there at the time the offense is committed.

Mr. LEVY. I am inclined to go along with you on that 100 percent. The only thing that worries me is the possibility of some judge's construction of the word "inhabitant" at a later date. We never know how that is going to be construed.

That word, as I recollect, has not had sufficient authoritative judicial construction, but I think that after this colloquy of ours the congressional intent would be perfectly clear on the record, and that would go just as well to clearing up the matter as would any change in the statute itself.

Senator McGRATH. It is my understanding that the language referred to any person physically residing in the United States at the time that an offense against his person or against his civil rights is committed.

Mr. LEVY. Even though he is sojourning there for just a day or two?

Senator MCGRATH. Yes.

Mr. LEVY. Fine.

The last part of the present section 241 (a) is left unchanged. It renders criminal the going of two or more persons in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured.

The bill then would add two valuable new subsections to section 241. Subsection (b) would make an individual guilty of criminal conduct if he performed alone the acts already criminal under (a) if he had performed them in concert with another.

This remedies an obvious defect in the existing law, since acts when criminal when performed by two should not be considered innocent because performed by one.

Subsection (c) is most valuable, as it gives the person whose civil rights have been violated a private right to a civil action for damage or other relief. There is a need for this law.

Only recently it was held in *Hardyman* v. *Collins* (80 F. Supp. 501) that those who were threatened with beatings by many because of their attempt to run an orderly political meeting had no right to sue their assailants for a violation of the civil-rights law.

That case is currently being appealed to the circuit court of appeals.

Much obscurity surrounds the present aspects of their rule, as a reading of the opinion makes obvious. Subsection (c) would dispel the clouds.

It should also be added that the congressional power to enact the rule of subsection (c) was reaffirmed in that very case.

I think an added need for the enactment of this type of section to provide adequate enforcement remedies is shown by a dispatch which was run in the New York Post Home News on Sunday, June 19, 1949.

I would like to read the dispatch into the record in part because it might not have received any notoriety in Washington. It is from page 3, and part of it reads as follows:

THIRTY KKK PROBERS ARE KLANSMEN; LEAK OF POLICE PLANS AIDS TERRORISM

BIRMINGHAM, June 18.—Most members of the sheriff's force, whose duty it is to halt the hooded night riders of the Ku Klux Klan here, either are Klansmen or sympathizers, the Post Home News learned today.

Sheriff's deputies, working with special State investigators, it was also disclosed, are letting the movements of the State agents get back to the Klan chieftains as the terrors of the KKK lash gripped Jefferson County for the ninth straight day.

Four State investigators have been working here the last few days under pressure of Bankhead Bates, State public safety director, who has said, "There is no room for mob rule in Alabama."

Of the 50 deputies on the sheriff's force, 30 admit they sympathize with the KKK. Most even admit to membership in the Klan.

Sheriff Holt McDowell says he's never been a Klansman and denies any knowledge of Klan sympathies among his deputies.

However, last June the sheriff publicly approved a raid by the hooded night riders on a Girl Scout camp near Birmingham where white scoutmasters were training Negro scout leaders. He said at the time, "It's a good thing it happened."

It is also worthy of note that the American Legion is getting quite aroused at this particular reign of terror. I think that, unless Con-

gress steps in promptly with a law of this sort which will adequately prevent the mob violence which might result from open clashes between the Legion and the Klan, I think many people, white and Negro are going to be hung.

I think this dispatch adequately answers the question of Senator Eastland to Mr. Maslow a few moments ago as to what instances of terror there have been in recent times.

Section 202 of the bill would amend the present section 242 of the Criminal Code to increase the punishment of one who deprives another under color of law of his rights or immunities, or subjects an inhabitant to different punishments because of his race, color, or being an alien, when such conduct results in death or maiming.

A new section is provided by section 203 of the bill, which would define six of the rights, privileges, and immunities referred to in section 242, thus adding much clarity to the bill and helping the lower courts in its administration.

There are other provisions in the bill—I do not think I need to go over them—dealing with involuntary servitude and strengthening Federal protection of the right to political participation.

There was some discussion previously between Senator Eastland and Mr. Maslow about the right to vote being federally protected, and I think that, rather than give my own opinion of that right to vote being federally protected, I would like to cite two opinions of the United States Supreme Court in which they have clearly held that right is federally protected.

Those cases are *Ex Parte Yarborough* (110 U. S. 651) and *United States* v. *Klesice* (313 U. S. 292).

Section 213 of the bill gives a right of civil action to one aggrieved by a violation of section 211 and provides that sections 211 and 212 shall also be enforceable by the Attorney General, thus giving two practical remedies for deprivations of these civil rights.

The prohibited conduct will be much less likely to occur if these remedies, easily pursued, are added to the already existent but seldom enforced criminal penalties.

Part 3 of title II prohibits discrimination of segregation in interstate transportation. While the Supreme Court has ruled that a State law imposing segregation is unconstitutional as an undue burden on interstate commerce—*Morgan* v. *Virginia* (328 U. S. 373)—it is not clear whether or not a self-imposed carrier regulation imposing segregation is unconstitutional.

Mr. Maslow mentioned before that a case involving that very question is up before the United States Supreme Court, and I would like to add to his analysis of the Morgan case that it was not merely because of the inconvenience in shifting that the Court threw out the statute imposing segregation.

There were three reasons which they considered to be a burden on interstaet commerce: Inconvenience in shifting, the difficulty of recognition in many cases between whites and Negroes, and the possible additional cost to the carriers.

Those were the three reasons, and I think that Senator Eastland's hypothetical situation is well answered by the fact that all three reasons played the only part in the Court's decision.

The States themselves, unfortunately, cannot outlaw these regulations even if they wanted to do so, because that would probably be an

undue burden on interstate commerce. The Supreme Court held that in an old case in 1877. That was *Hall* v. *DeCuir* (95 U. S. 485).

In this particular instance no cry can possibly be raised of States' rights for, as was said in the Hall case, "If the public good require such legislation, it must come from Congress and not from the States."

There can be no doubt that the public good requires the end of segregation. This degrading process must be stopped not only to stop the inroads of Communist propaganda, but also to restore dignity to all men, be they white or black.

Senator McGRATH. Thank you very much, sir.

Are there any other witnesses who wish to speak before we recess?

If not, we will recess until next Wednesday at 10 o'clock, at which time Senator Eastland has asked permission to have some attorneys general from his Southern States appear, presumably in opposition to the legislation.

(Thereupon, at 11:30 a. m., the committee recessed, to reconvene at 11 a. m. Wednesday, June 29, 1949.)

CIVIL RIGHTS

WEDNESDAY, JUNE 29, 1949

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

The subcommittee convened at 11 a. m., pursuant to recess, in room 424, Senate Office Building, Senator J. Howard McGrath, chairman of the subcommittee, presiding.

Present: Senators McGrath, Eastland, and Wiley.

Also present: Senators Robertson, Stennis, and Kefauver.

Robert B. Young, professional staff member.

Senator MCGRATH. We will proceed, gentlemen, if you are ready. The committee will come to order.

This is a continuation of hearings on S. 1725 and 1734, to provide means of further securing and protecting the civil rights of persons within the jurisdiction of the United States.

I want to welcome to the greatest committee of the Senate two of our disinguished colleagues, and I am sure you join me in that, who are not members of our committee.

STATEMENT OF HON. A. WILLIS ROBERTSON, A UNITED STATES SENATOR FROM THE STATE OF VIRGINIA

Senator ROBERTSON. I appreciate the welcome, and I am prepared to admit that any committee whose primary function is to safeguard the American Constitution can properly be called the greatest committee in the Senate, because without that Constitution, we could not preserve our democracy.

I come today to discuss S. 1725. I did not know that the hearings would also include S. 1734. I merely read that bill, and I must frankly admit that I have not been able to give to S. 1725 the study that so vital a proposal merits.

I have studied it enough, Mr. Chairman, to reach the conclusion that in my humble opinion it represents a dangerous trend in our National Government. It is the type of legislation which undermines the foundations of our Constitution and threatens to overturn the structure of government so carefully raised by our forefathers. It could lead to the exercise of local police powers by Federal officials. It would permit Federal interference with the conduct of elections. It would nullify sections of State constitutions and local statutes. It would strike at patterns of social behavior which the citizens of this country always have regarded as part of their inalienable right to choose their associates.

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In short, it would breach the wall separating the State and local powers from those delegated to the National Government in so many important places that this bill might appropriately be subtitled: "An Act to Repeal the Tenth Amendment."

I have not had an opportunity, as I have already indicated, to prepare a complete analysis of the bill, and so today I shall merely touch on some of its features which I regard as most obviously objectionable.

Senator WILEY. Did you say tenth amendment or Tenth Commandment?

Senator ROBERTSON. The tenth amendment. It does not repeal all of the Ten Commandments.

Senator EASTLAND. I wish you would specify which ones it misses.

Senator ROBERTSON. Before this subcommittee takes final action, I hope I shall be given an opportunity to outline my reasons for opposition in more detail.

To appreciate the significance of what this bill would do, if enacted into law, it is necessary for us to recall the history of Federal-State relations and the attitude which has been assumed at various periods toward what are commonly referred to as "State's rights."

In the period of the federation, before our present Constitution was adopted, State supremacy was unquestioned. Drawn together by the common danger of the war with Great Britain, the Colonies were in effect a league of sovereign states, operating jointly through a Congress that was more of a diplomatic assembly than a legislative body.

Senator WILEY. May I interrupt there?

Senator ROBERTSON. Yes.

Senator WILEY. When I attended the first meeting here, this bill, as I understood it, was a bill to constitute a committee which would give due consideration and bring forth certain recommendations.

In the hearing that Senator McGrath conducted here, at least, it seemed to my mind that the bill itself contained a lot of substantive changes or attempts to change substantive law, and probably even the Constitution. I felt at this time of the session that if we could create a committee, as I thought the bill originally meant, to constitute a committee, that would give time and consideration to this thing, and not throw these fundamental things in our lap for decision, that I would feel very pleased to support that.

I must say Senator Eastland has said to me that a number of attorneys general of the Commonwealth of this country are concerned and want to be heard. I told Senator Eastland that I certainly felt that that should be done.

But what particular part of this bill are you talking to now? I was in here, you know, at 11 o'clock, ready to participate, and then I got a lot of work on my hands so I went back, so I do not know just what particular portion of this bill you are talking to now. You say it violates the tenth amendment to the Constitution. What portion is it?

Senator ROBERTSON. I feel that I could answer that question in the shortest period of time by proceeding with my prepared statement, because that is what it does. It will tell you what parts of this bill that I think are objectionable and that violate the tenth amendment. I believe I could present that in a more orderly way as I go along with my prepared statement, but I will be glad to yield at any time for any elaboration on any point that I discuss.

I do not think that I am violating any confidences when I say that I discussed this bill yesterday with the Attorney General, and he told me that it did not change existing law, except with respect to conspiracy. He admitted that it did provide for Federal prosecution of one so-called conspirator, which is different from the existing law that one man under existing law cannot be guilty of a conspiracy. But I found out other things in here that I think change existing law with references, for instance, to segregation in railways stations and transportation, of that kind, that I think a portion of the bill that disturbs me the most is an effort to write out existing law concerning civil rights. There have been so many conflicting decisions of our courts on this subject of what is and what is not a civil right under the Constitution that I think when we try to write out a definition in law of civil rights, you have opened up the entire field for new Federal decisions that go far beyond anything we have ever had before on that subject.

The full implications of the outline of civil rights I am not prepared to discuss. I have not had time enough to examine all of the decisions on that which would possibly be affected.

Senator WILEY. Life, liberty, and pursuit of happiness defines civil rights, does it not?

Senator ROBERTSON. I did not hear you.

Senator WILEY. Life, liberty, and pursuit of happiness.

Senator ROBERTSON. Well, that has been the fundamental description of civil rights in our Declaration of Independence, but there have been literally hundreds of decisions since that time in defining what that means, and what the thirteenth, fourteenth, and fifteenth amendments mean.

I shall discuss some of that later in my prepared statement, but I want to say this by way of explanation of my fears when the Attorney General told me that this bill did not change existing law, I frankly wondered whether or not he prepared the bill. If he prepared the bill and told me that I would feel like I would be justified in accepting his opinion on it, but if somebody else prepared it, it may be like that experience I had in 1935 on the wage-and-hour bill that was prepared by Messrs. Tommy Cochran and Ben Cohen. As that bill was originally prepared, its patron, Mrs. Norton, of New Jersey, got on the floor and said, "This bill does not in any way change the interstate commerce laws of our Constitution." I challenged that statement with the language that I found partly in the front part of the bill that related to away back in the back part of the bill, that clearly showed a definition of what was interstate commerce, which had been so skillfully worded that it destroyed the decision of the Supreme Court in the New Orleans Railroad case, which had been the basis of the dividing line of the indirect effect on interstate commerce of a local action. That wiped out, in my opinion, the interstate section of the Constitution.

She was flabbergasted when I called attention to those provisions in the bill. She asked for the bill to be recommitted, and it was recommitted, and then those skillful architects of legislation went to work on the drafting of a new bill, and they put the same thing in it, but did that so skillfully that I could not catch it, and nobody else on the floor of Congress could catch it.

When it got to the courts they ignored completely the statement that the Congress had not intended to wipe out all distinction between

intra and interstate commerce, and the court sustained the bill so as you know at this time there is practically no distinction, and the wage-and-hour law applies to practically anything that is done on the theory that no matter how little and inconsequential it is, it burdens interstate commerce, and therefore comes under the jurisdiction of a Federal act.

In the same year the Wagner Labor Relations Act was presented to us. We were told that it merely spelled out the existing rights of labor, or did not do any more than that, it merely spelled them out. But we have since found that it did far more than spelling out the existing rights of labor.

So I have been reluctantly forced to the position that when a bill is not presented as prepared by some Member of Congress or by somebody whose ultimate objectives are known to me, I look with some frank alarm to any language in a bill that is susceptible of more than one interpretation, because I know that Mr. Justice Frankfurter has said that in a decision a few years ago the Supreme Court has the right to attach any meaning to language it sees fit, and it does not necessarily have to be the ordinarily accepted meaning of the language.

I also know that in pursuance of that theory of the power of the Court, any declaration of intent on the part of Congress where a law is susceptible of more than one interpretation is utterly useless when the bill reaches the Supreme Court, and that is the reason I say that when we attempt to spell out here certain civil rights, we have opened up the field for unlimited litigation, and the possibility of an argument that what we thought was intended to be one type of a kind of right, when we voted on the right, will turn out in an argument before the Supreme Court to be something entirely different from what we intended.

Now, Mr. Chairman, with your permission, I will proceed with the general development, first, of my theory of a division of powers between the Federal Government and the States, and then I will come more directly to what I think is an invasion by this bill of powers that were properly reserved either to the States or to the people.

After the Revolution was over the economic disadvantages of this system, and I was referring to a Continental Congress with no real powers, and its weakness from the standpoint of defense against other nations became obvious. The Convention of 1787 was called to seek a remedy. On the one hand were those who felt the answer should be a strong central government dealing directly with individual citizens throughout the Nation. On the other were those who feared that any government strong enough to act in this way would become a tyrannical superstate.

The tension that existed between those holding these opposing views was illustrated by the statement of George Washington, who was later quoted by Gouverneur Morris as saying—

> It is too probable that no plan we propose will be adopted. Perhaps another dreadful conflict is to be sustained. If to please the people, we offer what we ourselves disapprove, how can we afterwards defend our work? Let us raise a standard to which the wise and honest can repair. The event is in the hands of God.

The result of these disagreements, as I need hardly remind you, was what has been called "the great compromise" in our Federal Constitu-

tion—a plan under which the central government can deal with individuals but only within carefully circumscribed limits. As is explicitly stated in the tenth amendment which was adopted the first year after the ratification of the Constitution:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

It is our obligation to remember that if it had not been for the assurances of men like James Madison and Alexander Hamilton that the balance of power would be preserved, the Constitution probably would never have been ratified.

Senator WILEY. You realize that only extends to domestic affairs. The Court has held that in foreign affairs the power of the Federal Government does not come from the Constitution; it comes directly from the crown.

Senator ROBERTSON. I am going to touch on that before I conclude.

Senator WILEY. You are not going to leave anything for us to think about, are you?

Senator ROBERTSON. And when the Federalists, who believed in extension of centralized powers, tried to press their views in the early 1800's, they were met by Thomas Jefferson's Republican Party.

What happened then is well described by the recently issued report of the Council of State Governments on Federal-State Relations.

Senator WILEY. What happened to those Virginia Republicans?

Senator ROBERTSON. They started out with a good name, and then a lot of people liked the name Democrat, and they called themselves Republican-Democrats, and then the Republican-Democrats split up into the Whig Party, and the Whigs were the Federalists, so to speak, and the Democrats were the extreme State-righters, and we got into the campaign of 1860, when Mr. Lincoln decided that he would call himself a straight-out Republican. So we dropped that part of the name, and then we became just Democrats.

Senator WILEY. You got rid of the prefix, but kept the tail.

Senator ROBERTSON. I think Republican is a fine name if it retains its original significance. It is a republic form of government. And I think Democrat is a fine name, if it retains its original significance, that a Democrat is one who believes in the fundamental principles of the original form of government, which is the capitalistic system operating under private enterprise.

Senator WILEY. You are quite a definition artist.

Senator EASTLAND. I hear you have some Dixiegops in Virginia.

Senator ROBERTSON. What?

Senator WILEY. Dixiecrat.

Senator EASTLAND. I know what a Dixiecrat is. The newspapers say you have some Dixiegops in Congress.

Senator ROBERTSON. I cannot give you any definition of that, but I will look it up for you.

This report, prepared by the Hoover Commission, says at page 7:

In the earlier years of the [nineteenth] century, the Supreme Court was heavily weighted with Federalists who successfully sought to extend the national power at the expense of the States. Their object was the unification of the Nation, but their efforts stimulated the States to become increasingly aware of their side of a dual power system. In the later years of the century this duality was emphasized by the Court in quite a different way. The Court, in the post bellum years, was more inclined to pare down the national powers and

reserve more rights to the States. In this later period, the Supreme Court tried to set the National and State Governments at arm's length. Thus, in the long run, the Supreme Court's decisions during the nineteenth century show a strong tendency toward dual federalism—toward carving out separate fields of authority for the National Government, on the one hand, and the States, on the other hand. This tendency persisted until the 1930's. An obvious struggle for power between the National and State Governments followed.

Discussing the period from World War I down to the present, the study from which I have just quoted says that emphasis was on cooperative activities of State and National Governments. It points out that the Supreme Court gave its approval to cooperative legislative effort by State and National Governments for carrying out public purposes common to both which neither could fully achieve without the cooperation of the other. But, the council study adds:

The Supreme Court has not destroyed State powers acquired as a result of nineteenth century decisions. In several important ways it has fostered States rights. * * * In sum, the Court has given more scope to legislative discretion, with the result that the State and Federal jurisdictions interpenetrate each other with a flexibility and freedom unknown since the first days of the Republic.

While the chief concern of the study from which I have quoted is with taxation, welfare, and other programs, I feel the principle of accepted cooperation between Federal and State Governments has an application to the problem immediately before us.

We have progressed from a loosely knit federation of practically sovereign States to a stage where the States are truly united through a process of compromise and by recognition of the general advantage of this course. On the one occasion when force was substituted for the effort to promote voluntary cooperation, the result was bloody fratricidal war.

My first and most vehement objection to this proposed bill is that it is aimed at coercion of States and localities. It is built, in large part, on the foundation of statutes which were passed in the heat of anger after the end of the War Between the States and which were modified or abandoned when calmer judgments prevailed.

As the Attorney General of the United States points out in his analysis of S. 1725, the thirteenth, fourteenth, and fifteenth amendments, adopted between 1865 and 1870, became the authority for various civil rights statutes which were enacted, but, to quote his brief: "Over the years, through decision of the Supreme Court and congressional action in 1894 and 1909 the laws implementing the three amendments were reduced in number and scope," to the residue on which this bill is based.

The Attorney General contends that, and I quote his brief—

The existing civil rights statutes fall far short of providing adequate implementation of the amendments protecting life, liberty, and property.

With all due respect to this opinion, I think it may be questioned whether life, liberty, and property in this Nation will be better protected by restoring to these statutes some of the authority originally sought by Thaddeus Stevens and his vindictive followers. I think it also may be argued that any such effort may jeopardize that very precious thing which Daniel Debster referred to as "Constitutional American liberty."

Let us consider, briefly, what this bill purports to do.

Part 1 of title I would create a Commission on Civil Rights composed of five members appointed by the President. Three members

of this Commission would constitute a quorum. The duty and function of this Commission would be to gather information and—please note this language—

to appraise the activities of the Federal, State, and local governments and the activities of private individuals and groups, with a view of determining what activities adversely affect civil rights.

In his analysis of the bill the Attorney General says the Commission would act "as an educating and informational agency" and that it would—

act for the Federal Government in working for and cooperating with the States and local governments in the solution of civil-rights problems, offering advice and assistance where desired or needed.

What all off this means is that the President will be furnished with a propaganda agency, composed of personnel entirely of his own choosing, although subject to confirmation by the Senate, which may be completely partisan or sectional and which will be supplied from the Public Treasury with funds for a full-time staff and reimbursements of "such expenditures as, in its discretion, it deems necessary and advisable."

This agency, which might at times be highly competent and useful, but which at another time might just as easily become the tool of political expedience, would be authorized to "appraise," that is, to evaluate and pass judgment, not only on the activities of the Federal Government, but those of State and local government, and of private individuals which might in any way be classed as concerning civil rights.

I do not have to remind you of the role official propaganda agencies have played in the support of totalitarianism in other nations. I do urge that we consider carefully the possible results of placing such a weapon in the hands of the executive branch of our own Government and of giving as few as three men, responsible only to the one who appointed them, facilities for stirring up discord between sections of our Nation and exposing any community, official, or individual to widely circulated criticism.

I suggest also that it is unwise to authorize such a Commission to "accept and utilize services of voluntary and uncompensated personnel and to pay such personnel actual and necessary traveling and subsistence expenses," as is proposed in section 130 (b) of this bill. This would enable the Commission to ally itself with and in some degrees to support various pressure groups which are completely free from Government control. In the end the Commission, instead of using these groups, might be used by them as a subsidized, official mouthpiece.

Then, in part 2 of Title I there is authorization to enlarge the Civil Rights Division of the Department of Justice and to increase the personnel of the Federal Bureau of Investigation—

to the extent necessary to carry out effectively the duties of such bureau with respect to the investigation of civil-rights cases under applicable Federal law.

How much of a force will the FBI regard as necessary for this purpose? Will a staff be set up merely to handle investigation of cases clearly requiring Federal intervention, or will this authorization be used for the creation of a national Gestapo which will overshadow local police forces?

An indication has recently been given by the action of the Attorney General in sending FBI agents into Alabama to investigate operations

of Ku Klux Klan and possibly to attempt Federal prosecution of members of the Klan alleged to be guilty of flogging citizens of Alabama.

There is no Federal law on that subject but there is a State law on the subject of assault and battery. Both the Governor there and the Legislature of Alabama have promptly come to grips with that problem, and legislation has been passed which will make it difficult for those who commit crimes of assault and battery, either individually or collectively, to conceal their identity behind a mask of any kind. If without the provisions of the pending bill the Attorney General thinks it is the function of the FBI to participate in local matters of this character, how long would it take some succeeding Attorney General to build up a Federal secret police force to operate in every State in the Union, and what will become of personal liberty should that occur?

And may I also add in this connection that, if what happened in Alabama was a proper concern of the Federal Government where only white citizens were involved, why was not the race riot in the swimming pool in St. Louis, Mo., where 20 persons were injured and which it took 400 police a whole day to quell, not a proper subject for FBI investigation also? The issue in St. Louis was not any illegal misconduct but was precipitated solely by the efforts of Negroes to share a public swimming pool with whites. It was a race issue pure and simple.

Some further hint of what may happen can be found in the part of the Attorney General's brief dealing with this section of the bill.

The brief says that due to limitations under which the Civil Rights section of the Department of Justice has operated "it has not undertaken to police civil rights," but has handled only those cases brought to its attention by complainants, either directly or through Government agencies.

Note that, if you please. The implication could be that the exercise of police powers where civil rights are involved has not been undertaken simply because the staff to do so is lacking. There is no concession that even if there were an unlimited staff this might be a function best left to local authorities. There is no apparent recognition of the limitations of article IV, section 4, of the Constitution which says that the Federal Government shall protect the States against domestic violence only on application of the legislature or of the executive if the legislature cannot be convened.

I would direct your attention also then to the portion of the brief, page 13, in which the Attorney General says the civil-rights-enforcement program would be given "prestige, power, and efficiency" which it now lacks, and then quotes the statement of the executive secretary of the President's Committee on Civil Rights to the effect that with an expanded staff the civil-rights section could "search out" violations. The brief also points out that this bill would enable the Attorney General to "enjoin threatened infringements."

In other words, we are asked to set up a Federal force of unlimited size which not only can go into any locality and investigate and prosecute alleged violation of civil rights, but which may guess at the possibility that such violations may occur and try to prevent them by resort to Federal injunction. We have heard argument for days in the Senate recently on the question of whether an injunction should be allowed in the case of a labor dispute which involves national safety

and welfare and now it is proposed to give the Attorney General a legal tool which he says he could use at will, page 14, to resort to injunctions whenever he considers that the rights of one individual might be threatened by another individual.

Part 3 of title I would establish a Joint Committee on Civil Rights which might serve a useful function, but which, like the Commission proposed in part 1, might be subverted to political use by the party in power at any given time. Having the power to subpena the attendance of witnesses and production of documents, this committee could harass without limit citizens or local officials whose conduct it did not approve.

Let us come now to title II which deals specifically with civil rights guaranteed by law.

Some of the changes proposed in part 1 are technical and might improve the existing civil-rights statutes, but a major change is made by the addition to section 241 of title 18 of the United States Code a new subsection extending the conspiracy provision to cover individuals.

It is true that the courts have upheld as constitutional the Federal proescution of two or more persons who conspire to injure, oppress, threaten, or intimidate a citizen in the exercise and enjoyment of his constitutional rights.

But it also is true that from the decision in the civil rights cases in 1883 on down to the present, the Supreme Court has held that actions of individuals against other individuals are not subject to Federal jurisdiction. As Chief Justice Vinson said in the case of *Shelley* v. *Kraemer* last year:

> The principle has become firmly imbedded in our constitutional law that the action inhibited by the first section of the fourteenth amendment is only such action as may fairly be said to be that of the States. That amendment erects no shield against private conduct, however, discriminatory or wrongful.

This whole theory must be reversed if we adopt the philosophy of S. 1725. If the Federal Government can punish an individual for injuring, threatening, or intimidating another individual where no official action is involved and no State line is crossed in a civil-rights case, the whole field of police power is opened up. It is equally logical for the Federal Government to prosecute a man who steals another's purse or who commits a simple assault.

There may be some difference of opinion as to the significance of the changes which this bill would make in section 241 of title 18 of the code, dealing with actions of officials or other "under color of any law."

It may be true, as I understand the Attorney General argues, that the bill merely clarifies matters which have been settled in effect by court decisions. It seems to me, however, that there is also a possibility that these changes, especially when they seek to clarify such controversial issues as were involved in the Screws case—where four separate opinions were written—may open up more channels of controversy than they close.

For example, on the basis of the Screws case it has been held that willful intention to deprive a person of a specific constitutional right must be shown. This bill prescribes punishment not only for anyone who willingly subjects another to deprivation of rights of privileges, but also for anyone who "causes" another to be "so subjected." That might open up a whole new field for Federal interference.

Then we have the new section 242A in which "rights, privileges, and immunities" of citizens are enumerated. The Attorney General's brief says this section does not create any new right not heretofore sustained by the courts. If nothing new is added, then why is the enumeration necessary? One theory might be that such enumeration would persuade the courts to recognize as rights of a citizen of the United States and therefore subject to Federal jurisdiction, matters which the Supreme Court has recognized ever since its decision in the slaughter-house cases as privileges and immunities of the citizens of the several States and hence subject to protection by State authority.

For example, would the statement in this bill of the right to be immune from punishment for crime except after a fair trial be interpreted as the equivalent of antilynching legislation which many of us have regarded as unconstitutional?

Would the statement of the right to vote as it is set forth here be interpreted as a basis for outlawing poll taxes?

Or would the right to protection of person and property without discrimination be construed to cover these matters previously dealt with in FEPC bills?

If we are to face these issues I would prefer to do it headon rather than to pass an omnibus bill without being sure what it covers and then wake up to find that we are plagued with the same unconstitutional features that have characterized individual civil-rights bills in the past.

Similarly part 3 of the bill dealing with equal enjoyment of accommodations of public carriers contains the phrase "and all facilities furnished or connected therewith." Does this mean that in a city where segregation is the rule it will be a criminal offense to provide a station with separate rest rooms for the races? Here again the intent is evidently not merely to enforce the Federal law where interstate commerce is concerned but to extend its jurisdiction into every locality.

It seems only too plain that this bill is aimed at a region of the country and is based on political expediency.

Recently I visited the State of North Dakota and attended the dedication of the Roosevelt Memorial National Park. In an assembly estimated at 25,000 to 30,000 I did not see a single colored person, and in conversation with a native of North Dakota I was informed that there were not more than 600 Negroes in the entire State.

The pending bill would cause no domestic discord in a State like North Dakota, but forbidding a State which has a large colored population to continue such simple practices of segregation as providing separate rest rooms in railroad and bus stations is quite another matter.

We do not need this bill at the present time. We do need to rededicate ourselves to the fundamentals of democracy. We need to recall the philsophy of James Madison, who so clearly pointed out the relation of the States to the Nation in one of his messages to the Congress in which he said:

> The Constitution of the United States was formed by a convention of delegates from the several States, who met in Philadelphia, duly authorized for the purpose, and it was ratified by a convention in each State which was especially called to consider and decide on the same. In this progress the State governments were never suspended in their functions. On the contrary, they took the lead in it. * * * There were two separate and independent governments established over our Union, one for local purposes over each State by the people of the State, the other for national purposes over all the States by the people

of the United States. The whole power of the people, on the representative principle, is divided between them. The State governments are independent of each other, and to the extent of their powers are complete sovereignties * * * In thus tracing our institutions to their origin and pursuing them in their progress and modifications down to the adoption of this Constitution two important facts have been disclosed, on which it may not be improper at this stage to make a few observations. The first is that in wresting the power, or what is called the sovereignty, from the Crown, it passed directly to the people.

I come now to one of the questions you asked me at the start as to where the power passed when it was taken away from the king. James Madison said it passed directly to the people.

The second, that it passed directly to the people of each Colony and not to the people of all the Colonies in the aggregate; to 13 distinct communities and not to one. * * * What produced the Revolution? The violation of our rights. What rights? Our chartered rights. To whom were the charters granted, to the people of each Colony or to the people of all the Colonies as a single community? We know that no such community as the aggregate existed, and of course that no such rights could be violated. It may be added that the nature of powers which were given to the delegates by each Colony and the manner in which they were executed show that the sovereignty was in the people of each and not in the aggregate. They respectively presented credentials such as are usual between ministers of separate powers, which were examined and approved before they entered on the discharge of the important duties committed to them. They voted also by Colonies and not individually, all the members from one Colony being entitled to one vote only. This fact alone, the first of our political association and at the period of our greatest peril, fixes beyond all controversy the source from whence the power which has directed and secured success to all our measures has proceeded. * * * By article IV, section 4, the United States guarantees to every State a republican form of government and engages to protect each of them against invasion; and on application of the legislature, or of the executives when the legislature cannot be convened, against domestic violence. * * * Of the other parts of the Constitution relating to power, some form restraints on the exercise of the powers granted to Congress and others on the exercise of powers remaining to the States. The object in both instances is to draw more completely the line between the two governments and also to prevent abuses by either. Other parts operate like conventional stipulations between the States, abolishing between them all distinctions applicable to foreign powers and securing to the inhabitants of each State all the rights and immunities of citizens in the several States. * * * The great office of the Constitution of the United States is to unite the States together under a government endowed with powers adequate to the purposes of its institution, relating, directly or indirectly to foreign concerns—

I pause there to mention your comment on the power and sole power of the Federal Government to handle foreign matters. That was frankly admitted by Mr. Madison in this message, and I repeat—

under a government endowed with powers adequate to the purposes of its institutions, relating, directly or indirectly to foreign concerns—

and to continue with my paper—

to the discharge of which a national government thus formed alone could be competent. * * * The Constitution forms an equal and the sole relation between the general government and the several States, and it recognizes no change in it which shall not in like manner apply to all.

The concludes my observation on this bill, and I have just quoted that message of a great President to the Congress, who was close to the adoption of the Constitution, who was in as good a position as anyone of his day and time to know and to understand the real purposes and the real meaning of that great document.

I submit with all due deference that it is vital to the perpetuity of democratic institutions to preserve our Constitution, to preserve the dual relationship between the Federal Government and the States

over and above all else, to preserve to the people those powers which the founding fathers did not confer either upon the Federal Government or upon the States, and I feel with all due deference there are provisions in this bill that strike at those personal rights of individuals of being free from investigation and possible prosecution by Federal officers for individual actions which, if they constitute a crime, fall definitely under the jurisdiction of the offices of the State in which they hold their citizenship.

Senator McGrath. Thank you very much for coming this morning and making this statement to us.

Senator Stennis.

Senator Stennis. I do not know what your plans are about sitting here, but I just want 1 minute to make a request of the subcommittee.

Gentlemen, I left the Capitol here 3 weeks ago last night feeling like I was not going to be well the next day and I was not. I carried with me a copy of this bill with the idea of studying it while I was detained there. But I had to go to the hospital. I was not able to study it.

Senator McGrath. I am glad to know that reading the bill was not the cause of your protracted illness.

Senator Stennis. It was not.

Yesterday was my first day back on the Hill, gentlemen. It is my first chance to really get into this matter. This is so far reaching and involves, as I see it, so much about law enforcement, that I would like very much to have an opportunity to make preparation and then present my ideas and views on this matter.

I am forced to ask under the circumstances for time to do that. I am going to make it No. 1 on my calendar if I am granted that time, and I will work at it, but it has been indicated it is a deep matter, and it will take me some time to go through it.

Senator McGrath. How much time do you suggest?

Senator Stennis. I think it will take me at least 10 days as a minimum to prepare on it like I want to. I can assure you that I will work at it quickly and work right on through on it.

Senator Eastland. It is my purpose to move that the hearings go over for 2 weeks in order to give people a chance to prepare themselves. Judge Leander Perez, of New Orleans, is one of the great attorneys of the United States. He is working full time on this bill and has for the past week. He says that it will take him at least 2 weeks to prepare, to be prepared to testify.

As the chairman knows, Mr. Young has been assigned by the chairman of the Judiciary Committee exclusively to work on this bill. Mr. Young, as the chairman knows, is an able lawyer. He is breaking down the decisions that the Attorney General cites. He has been working on it how long, now?

Mr. Young. Since the last hearing, about 10 days ago.

Senator Eastland. About 10 days ago, working exclusively on this matter. And then he has got to check to see which decisions have been overruled, and additional decisions, and Mr. Young says he cannot possibly do it within 2 weeks.

The attorney general of Mississippi, when we first had hearings, assigned one of his assistants, Mr. Kuykendall, who sits here, and I may say that he is a very able lawyer, to work exclusively on this matter. He is here to testify. He has a brief that is largely on one phase, is that right?

Mr KUYKENDALL. That is right.

Senator EASTLAND. That is all he has been able to cover. The thing is far-reaching. He says that this phase of segregation and interstate commerce, that is, the provisions of the bill that apply to that, are unconstitutional and it will take him, with the assistance of Mr. Arrington, who is also assisting him, that long.

Mr. KUYKENDALL. He is preparing on the other phases of the bill.

Senator EASTLAND. It will take him 10 days to 2 weeks to comprehensively discuss this bill.

Since the first hearing I have had the matter up with the attorneys general of a number of States, and they desire to come, they desire to testify. They say that the thing is so far-reaching that it will take time for them to do that. I understand that the attorney general of Virginia will come, that the attorney general of Texas, the attorney general of Louisiana, the attorney general of Arkansas, they desire to testify. It is a big subject. It will take time to prepare.

I desire to call the Chair's attention to the fact that the Civil Rights Committee was appointed by the President in 1946. It rendered its opinion or its report in the fall of 1947. In February 1948, and this is shown by a letter that the chairman mailed to each Member of the Senate, with a copy of the Attorney General's brief, that the President sent his message in the 1st of February 1948, and as the chairman says, work began immediately on the preparation of these bills. That is, of this bill. It took the Department with their resources from February 1948 until the month of April of this year to prepare the bill.

Of course, we do not expect and do not request anything like that time, but the point is that it took the Department all of that time to prepare it, and we are certainly entitled to a reasonable time in which to check on what the Department has done, and present our views.

If the committee would like to hear Mr. Kuykendall, I would like to request that the hearings then go over for 2 weeks, and then that we take the attorneys general and the other lawyers and other Senators that desire to be heard, and conclude the matter.

We have a great number of Senators who desire to testify, and they all state that they have not had time, that it is a subject that will take time to cover. If it took the Department over a year to prepare a bill, we would certainly be entitled to a couple of weeks to study it.

Senator MCGRATH. I think your request is quite reasonable, and I agree with you that you should have time to prepare, and if it meets with the approval of Senator Wiley, who is the other member of the committee, we will continue the hearing until 2 weeks from today.

Senator EASTLAND. This is Wednesday. Could you make it 2 weeks from tomorrow?

Senator MCGRATH. Yes. That is all right with me; 2 weeks from tomorrow. That will be Thursday. I would like to have one long hearing at which we could finish with these witnesses, and I imagine each of them will have rather extended remarks to make on the provisions of the bill. So we ought to try to keep that day open so that we could sit all day if necessary. These men are busy in their jobs back home, and I do not want to bring them here and have them sitting around the hotel rooms 2 or 3 days waiting for our convenience to hear them. So, if we set Thursday at 10 o'clock, we would plan to go through the day, if necessary.

Senator EASTLAND. Would you hear from the attorney general of Mississippi?

Senator MCGRATH. How long do you want?

Mr. KUYKENDALL. Senator, I have filed there my written brief, and I would not think of attempting to read all of that here today. I can take a few minutes and summarize it briefly to you, if it is agreeable with the committee.

Senator MCGRATH. We will continue in the District Committee room at 3 o'clock.

(Thereupon at 12:10 p. m., a recess was taken until 3 p. m. the same day in the District Committee room of the Capitol.)

AFTERNOON SESSION

Senator MCGRATH. The hearing will come to order.

We will now hear from Mr. Kuykendall.

STATEMENT OF JOHN M. KUYKENDALL, JR., ASSISTANT ATTORNEY GENERAL OF THE STATE OF MISSISSIPPI

Mr. KUYKENDALL. My name is John M. Kuykendall, Jr., from the State of Mississippi, in the attorney general's office there. I am one of the assistant attorneys general.

Senator MCGRATH. Who is the attorney general?

Mr. KUYKENDALL. Mr. G. L. Rice. He has been in office about 18 years, a native Mississippian.

Gentlemen, I am just going to summarize this brief that we have prepared. I have had 10 days here to go into the bill; and, like Senator Robertson, I only got into S. 1725. I did not have the opportunity to study the other, or study all parts of this bill. As a matter of fact, I have devoted most of my brief—and the original of it I filed with the reporter for the committee, available for the committee—most of it deals with one question. That is the right of the individual citizen of the United States to separation of races on interstate carriers.

To me, I think the whole question is whether presently existing rights, which are now enjoyed by citizens of these United States, should be abolished by this bill, which I think it would do. It would abolish existing rights. It would set up a right which has never existed before; that is, the right of certain classes asking to have the Federal Government force people to associate with them.

When I started the preparation of the brief I thought I should have some interesting points to start with, and it occurred to me I might point out that the wisdom of our fathers in writing the Constitution is simply in guaranteeing the pursuit of happiness rather than guaranteeing happiness.

Senator MCGRATH. We should also pursue it and never achieve it; is that what you think?

Mr. KUYKENDALL. I searched through the United States Constitution, and I could not find any mention of the pursuit of happiness in it. It does not appear in the Constitution. I think it must be in the declaration of Independence.

Senator MCGRATH. Is it in the preamble?

Mr. KUYKENDALL. No, sir; I could not find it in the United States Constitution, and I think that in much of our discussion, doing it all over the country right now, about civil rights, we are assuming things are in the Constitution which nobody ever intended to be there and which actually do not appear there.

All of this question I think comes under the fourteenth amendment to the Federal Constitution, and I have just a short statement here which I would like to make concerning the separation of the races on an interstate carrier, and I think particularly article IX of the United States Constitution is applicable concerning not only that part of the bill but all of it.

Section 9 provides:

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

And, of course, you know that part was written before section 14; and, as pointed out in the United States Supreme Court decisions, the reason for section 14 was previous section 13, which had been passed to do away with slavery itself. It was felt that section 14 was needed to strengthen that.

This entire brief, our entire argument on this question, in my opinion, is much better stated than I could state it. I know I am biased because I am from that part of the country, just as I think the Attorney General of the United States in his brief in this matter is biased, on the other hand, for reasons which he probably knows much better than I do. I am not going to ask that our statement or our opinion that your bill is unconstitutional be accepted standing alone, and instead I would like to refer you to one of the best-known written works on law which I think has come out in many a year, which is Corpus Juris Secundum, which has a section devoted to civil rights.

Under this section on civil rights in C. J. S., appears one of the best statements directly in point on this very matter under consideration here, and I would like to briefly quote it:

The purely social relations of citizens cannot be enforced by law.

And then, skipping over to another part:

The rights and privileges secured or guaranteed by the thirteenth, fourteenth, and fifteenth amendments to the Constitution of the United States are subjects of legitimate protection by the lawmaking power of the Federal Government under the power expressly conferred on Congress to enforce the provisions conferring these rights by appropriate legislation. Generally speaking, whatever legislation is appropriate—that is, adapted to carry out the objects the amendments have in view—whatever tends to enforce submission to the prohibitions they contain and to secure to all persons the enjoyment of perfect equality of civil rights and the equal protection of the laws against State denial or invasion, if not prohibited, is brought within the domain of congressional power.

Under the thirteenth amendment the legislation, so far as necessary or proper to eradicate all forms and incidents of slavery and involuntary servitude, may be direct and primary, operating on the acts of individuals, whether or not sanctioned by State legislation. There is a distinction, however, between the powers of Congress under the thirteenth amendment and its powers under the fourteenth amendment.

Under the fourteenth amendment the legislation must necessarily be, and can only be, corrective in its character, addressed to counteract and to afford relief against State regulations or proceedings. A similar view has been taken in respect of the fifteenth amendment. The fourteenth amendment does not empower Congress to legislate against the wrongs and personal action of citizens within the States, nor to regulate and control the conduct of private citizens. Hence an enactment which exceeds the limits of corrective legislation and

inflicts penalties for the violation of rights belonging to citizens of the State as distinguished from citizens of the United States is not authorized by such amendment, so far as its operation within the States is concerned.

Here is the statement of C. J. S. I say that this is directly in point:

The amendments here under consideration do not authorize Congress to enact a statute which assures to all persons within the jurisdiction of the United States the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances, theaters, and other places of public amusement, insofar at least as the operation of such a statute within the several States is concerned; and, to that extent at least, such a statute is invalid.

That, of course, is talking about the civil-rights cases. That is what C. J. S. cites as authority. There are other United States Supreme Court opinions there. I will touch on that in a minute, but I would like to go on under the same subject from C. J. S.:

Objects and effect: One of the objects of the various so-called civil-rights acts enacted by Congress under the actual or supposed authority conferred by the foregoing amendments is to place colored persons on a level with white persons in respect of civil rights. They do not, however, confer equality of social rights or privileges or enforce social intercourse, nor do they forbid a State court from holding the issue of a slave marriage illegitimate and unable to inherit from the father.

It is our contention that that bill being discussed here—that is, S. 1725—is so written that its object is to force social intercourse.

Senator McGRATH. You mean that, because two persons necessarily have to ride on the train, that that relationship, establishing the relationship of passenger, is social intercourse?

Mr. KUYKENDALL. Yes, sir. The statement I would like to make is this, that we do not deny that an interstate passenger under our present law and the United States Supreme Court decisions has a right which is known as the right of full and equal accommodation on that train. Of course, the Mitchell case—that is, that of Congressman Mitchell before the United States Supreme Court—decided that, and they decided the Interstate Commerce Commission has a right to see that he gets that from the carrier, but we do say that the Court has consistently upheld the right, what you might call the right, of separation of races.

Here is the thing about it. These people are agitating for these bills, and they have run head-on with other rights. It is a clash of rights. Has any man anywhere the right to segregate himself from any other people, whether it be because he wants to do it because of their race, color, religion, or anything else? Can anybody argue that an American citizen today does not have the right to segregate himself? As a matter of fact, today on our trains down South, what is happening now under the recent Supreme Court decisions is they used to segregate Negroes, now they segregate the Mississippians. You get on the train down there, and you will find many Negroes riding on white coaches, and I know this is true, Senator. You have seen it. That is on an interstate train. But they are riding with people from the North. You will find most of the Southern people in separate accommodations entirely. It is a clash of rights.

It is the same old story that has brought every lawsuit into being from time immemorial, the one right against the other.

Our contention is that Congress has no authority to abolish our rights to separate ourselves from another race, and in support of that I cite the same thing that C. J. S. does, which is the old civil-rights cases.

The mere fact that a decision of a court is in our old lawbooks does not mean that it is no longer law; and from the study I have made of just the sole question of separation of races on a carrier—even though our Supreme Court has written some law in later times that people disagree with, and some even go so far as to say they are off—it is my contention and conception that the effect of all of their decisions is on this that they are in line.

Furthermore, they have not overruled any part of the old civil-rights case which was decided shortly after the Civil War. Of course, that was decided on facts and at a time when these things were being discussed and debated all over the country, and the Court in its wisdom there can be presumed to know exactly what they were dealing with.

It is one of the best-written opinions I have read in any case, and I strongly urge all of the members of the subcommittee to go to that particular case, at least to the parts of it we have cited here in our brief, to get the full gist of the rights of the individual, what kind of rights they are; are they social rights; are they rights which can be legislated away; or are they rights which can be regulated?

I contend that, from time immemorial, since we have had our form of government, that the Supreme Court has been extremely cautious in putting the tag on any right. They always go about saying that the facts of that particular case justify the right or do not justify it. In other words, they say that a State has the right to regulate the races within its borders. They have upheld that right consistently. There have been two types of statutes: The southern type, which requires separation of races on a carrier, and here in recent times we have in the Northern States, I think, some 10 or 12, as the Attorney General points out, statutes which prohibit discrimination of the races on a carrier.

I would like, before going into that, to point out that, in your bill, the word "discrimination" and the word "segregation" are used together, as though they meant the same thing. Well, discrimination is a violation of the law right now under the Interstate Commerce Act. It prohibits any unjust discrimination against anybody. They do not go into color or anything like that. That is on an interstate carrier. The ICC has jurisdiction to enforce it, as was decided in the Mitchell case by the Supreme Court. That is discrimination.

On the other hand, segregation is something else entirely different, but the way this bill is written in the last part there, it makes segregation a discrimination. It makes segregation, which has always been a valid operation, into an offense by law. Furthermore, the separation of races, as you can readily see, is such that a passenger on a carrier, his relation with the carrier, is a contract relation, and there is no reason in the world why he cannot make that contract. There is no reason why he and the carrier cannot enter into any arrangement for his travel desired. It is illegal not to do so.

Would the Federal Congress say that he and the carrier cannot have such an agreement?

As we point out, if they did pass this law, suppose an all-Negro baseball team wanted to go from Memphis, Tenn., to Washington, D. C., to play some other teams of their own race, and desired to all go in one car on the train. Under the law, it would be a Federal offense if the conductor of that train or anybody kept out of their car simply

because of their race or color or he could not keep them out because he did not have a ticket, or something like that, but, if all other qualifications stood, the railroad accidentally sold him a ticket to the train in general, and they had no other restrictions on this car, under your law the man could not come into that car. It is that broad.

Senator McGRATH. If the railroad leased the car to the particular group, of course, it has a right to keep anybody out. Then it is not keeping him out because of race or color.

Mr. KUYKENDALL. We would have an argument then, would we not, as to why he was kept out? I predicated my statement that he kept him out because of race or color. For instance, we will presume the team did not want a white man in that car. That is legitimate as a want on their part.

Senator McGRATH. No; I do not think that is legitimate on their part.

Mr. KUYKENDALL. At the present time it is legitimate, but if you passed a bill it would then become illegal for them to want that.

Senator McGRATH. They would be asking the railroad to discriminate against a person by reason of color. They have a perfect right to say, "Do not let anybody in this car; we do not want anybody here," but you cannot say, "Do not let anybody in here because he is black or white." It would be a violation, and it ought to be.

Mr. KUYKENDALL. For instance, if the car, instead of being an all-Negro team, was a group of people of the Jewish religion desiring to go from New York to Miami on a fraternal visit down there, the bill covers them, too. If they told the people that ran the train, "We want to keep this all in our religion here, we do not want to sit with some other people, we have some things to discuss here that are intimate to our religion," it would be a violation of the law for the train to keep somebody else out of there simply because of their religion.

It is a very broad bill. I am getting afield from the discussion I intended to put over.

The only part that I am attempting to convey to the committee here is the results of my study of the law on the question of the constitutionality of the bill, and I can make the statement safely that, in the civil-rights case, you had a bill almost identical to this, and it is obvious that many phrases of this bill were taken right out of old law which was being construed by the Court then.

Senator WILEY. What is the volume and the page of that?

Mr. KUYKENDALL. That is 109 U. S. 3, 27 Lawyers Edition 835.

This is out of the brief, Senator, the original of which you will have.

It was a group of cases from the Federal courts of Kansas, California, Missouri, New York, Tennessee, and it charged the defendants in the different cases with denying rights.

Senator EASTLAND. I understood every one of those cases went up from a Northern State.

Mr. KUYKENDALL. These are the States: Kansas, California, Missouri, New York, Tennessee. And then Tennessee was considered a Northern State, I think.

The defendants were charged with denying to persons of color the accommodations and privileges of an inn or hotel; a theater; a seat in the dress circle in a theater in San Francisco; and in the case of the Memphis & Charleston Railroad Co. versus Robinson, an action under the act to be cited below for the statutory penalty for the re-

fusal by the conductor of the railroad company to allow the wife of the plaintiff to ride in the ladies' car because she was of African descent, all of these cases were considered together, and the opinion of the United States Supreme Court is now known as the Civil Rights cases.

These cases involve the constitutionality of the first and second sections of the act of Congress known as the Civil Rights Act, passed March 1, 1875. I will read these two sections:

Section 1. That all persons within the jurisdiction of the United States shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances on land or water, theaters and other places of public amusement; subject only to the conditions and limitations established by law, and applicable alike to citizens of every race and color, regardless of any previous condition of servitude.

SEC. 2. That any person who shall violate the foregoing section by denying to any citizen, except for reasons by law applicable to citizens of every race and color [that same phrase is used in the other bill] and regardless of any previous condition of servitude, the full enjoyment of any of the accommodations, advantages, facilities, or privileges in said section enumerated, or by aiding or inciting such denial, shall for every such offense forfeit and pay * * *.

And it sets out a fine, a forfeiture, and a term of imprisonment of not more than 1 year under certain provisions.

This act here is substantially the same as the Michigan Nondiscrimination Act, and the other acts upon which the proposed bill was drawn which have by the way been held valid by the United States Supreme Court, as long as they are limited to the State, that is, to operation within the State.

Senator EASTLAND. What the Court did there was to apply the Michigan statute; is that right?

Mr. KUYKENDALL. In the late case of Bob-Lo Excursion Co. that is true. But they have held that they do not apply to interstate commerce, and that, if they did attempt to apply to interstate commerce, they are invalid. In fact, in the case of *Hall* v. *DeCuir*, they held the Louisiana statute passed by the skalawags down there shortly after the Civil War, which is identical to this, was unconstitutional, because it was construed by the Louisiana court to affect interstate commerce.

But going on with this particular case here, the Civil Rights case, the Court had the question of whether or not it was constitutional for the Federal Government in opposition to States to have enacted this measure, and they explained:

The first section of the fourteenth amendment, which is the one relied on, after declaring who shall be citizens of the United States, and of the several States, is prohibitory in its character, and prohibitory upon the States. It declares 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." It is State action of a particular character that is prohibited. Individual invasion of individual rights is not the subject matter of the amendment. It has a deeper and broader scope. It nullifies and makes void all State legislation, and State action of every kind, which impairs the privileges and immunities of citizens of the United States, or which injures them in life, or which denies to any of them the equal protection of the laws. It not only does this, but, in order that the national will, thus declared, may not be a mere brutum fulmen, the last section of the amendment invests Congress with power to enforce it by appropriate legislation. To enforce what? To enforce the prohibition. To adopt appropriate legislation for correcting the effects of such prohibited State laws and

State acts and thus to render them effectually null, void, and innocuous. This is the legislative power conferred upon Congress, and this is the whole of it. It does not invest Congress with power to legislate upon subjects which are within the domain of State legislation; but to provide modes of relief against State legislation or State action of the kind referred to. It does not authorize Congress to create a code of municipal law for the regulation of private rights; but to provide modes of redress against the operation of State laws, and the action of State officers, executive or judicial, when these are subversive of the fundamental rights specified in the amendment. Positive rights and privileges are undoubtedly secured by the 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.

Skipping down into the opinion, they touched on whether or not these statutes were authorized under the thirteenth, fourteenth, and fifteenth amendments of the Constitution, and they held that they were not.

* * * 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 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. * * *

I will skip to another part of the opinion Speaking of whether the States may deprive persons of life, liberty, and property:

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? 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 that 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.

Skipping to another part of this same decision, which answers every conceivable argument which could be made in support of the validity of this act, as a piece of Federal legislation, the Court 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 wrong-

ful 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 these 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 its 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.

Skipping to still another part of the same opinion which points out the intent of the fourteenth amendment, and they were here speaking of the bill which was passed there to prohibit the riding on conveyances, the separation there:

* * * This is not corrective legislation; it is primary and direct; it takes immediate and absolute possession of the subject of the right of admission to inns, public conveyances, and places of amusement. It supersedes and displaces State legislation on the same subject, or only allows its permissive force. It ignores such legislation, and assumes that the matter is one that belongs to the domain of national regulation. Whether it would not have been a more effective protection of the rights of citizens to have clothed Congress with plenary power over the whole subject, is not now the question. What we have to decide is, whether such plenary power has been conferred upon Congress by the fourteenth amendment; and, in our judgment, it has not.

Then the Court took up a discussion of the thirteenth amendment, whether this law could be valid under that. It was construed to mean that it was in slavery, and the argument had been in this case that separation of the races was a badge of slavery.

Senator WILEY. The language you read was the bill that was passed by Congress shortly after the Civil War?

Mr. KUYKENDALL. Yes, sir.

Senator WILEY. The substance of that bill is practically contained in the present bill?

Mr. KUYKENDALL. It is practically identical to this.

Senator WILEY. And in this language you last read, they held there that that was not within the domain of the national legislature to pass such a law.

Mr. KUYKENDALL. Yes, sir. The civil rights case clearly holds that this part of the bill concerning the separation of the races is unconstitutional. The only argument which could be proposed today that I could conceive of is that this is no longer the law, but I do not see how anybody could say it is no longer the law because it is old. It is 75 years ago. Historians talk about the tenor of the Court changing

from those days to now. It is true that the language they use in opinions differs widely.

Senator EASTLAND. Has that case been overruled?

Mr. KUYKENDALL. It absolutely has not. The most recent case on this subject is set out here in the brief, which is the Bob-Lo Excursion Co., a 1948 case, in which the civil rights case is referred to by the Supreme Court. They could have overruled this. They have the power to overrule any decision they have ever written. They have in innumerable instances. And if the majority of them got together and decided to do so, they could say, "This case is no longer law" and have written new law. But a careful study of all of the cases that they have made separation of races will reveal that not only have they failed to overrule this, but the decisions on this subject, in my opinion, are consistent.

Many southern lawyers would say I was crazy for making that statement, probably because they are older than I am, and they have been prone to believe that it has been because State laws have been changed. You have to disregard all State opinions when the United States Supreme Court has ruled on the subject, because their word is final, and they have upheld as valid both types of these State statutes, as long as they are State statutes, that is, the statute which requires separation of the races, where they have said that this valid police power of the State as long as it does not interfere with interstate commerce, and then they have upheld a statute which prohibits any kind of discrimination on carriers in the State. They have upheld it, but they said it is valid as long as it does not interfere with the interstate statutes.

I agree with them. It is a matter of State regulation. It is a matter that grows with time, and time alone can cure those prejudices over whatever it is in human beings that make us discontinue with different races or different religions, but the State can do whatever is necessary to regulate or police them in the meantime. But the Supreme Court decided right after the Civil War that the Federal Government cannot, that the limit to which the Federal Government can go is to prohibit a State from doing anything that is not acting under the color of law.

You are familiar with that. That was the intent. As long as the State or somebody goes out here and acts under the color of the law, then they violate the civil rights.

It was brought out very forcibly in Morgan versus the State of Virginia, in which this Negro girl wanted to get on this interstate bus, she had a ticket, going from one part of Virginia over through the District of Columbia into Maryland. She had bought a ticket and got on the bus and sat in the front part of it, and the bus driver told her to move to the rear with the colored people and she refused. He called the policeman and he came in and told her that she would have to do that or else be arrested. She refused to do it, and he arrested her and took her off the bus. She was convicted in the Virginia courts, the Virginia State court upheld it.

Virginia had enacted a law in 1930, which is substantially different from most other Southern States on the separation of races. For instance, Mississippi law was first tested in the United States Supreme Court around the time of this civil rights case. That simply requires the carrier to afford equal separate facilities for the two races, and it

is based on that line. It is a requirement on the carrier, and then there is a police restriction in it that requires people to sit in those. That was upheld by the Mississippi court, first, which held specifically that it did not apply, the Legislature of Mississippi did not intend by that act to apply it to interstate commerce, and when it came to the Supreme Court, they said, "We will accept this finding of the Mississippi court as long as it does not apply to interstate commerce. We will hold that law valid." And they did.

Virginia wrote a law which they thought would come in between the law and figure out some means there of controlling the separation of the races on interstate commerce because the Virginia law specifically provided that it applied to both intrastate and interstate commerce. It further went on to provide that the carrier had the authority, that is, the agents of the carrier had the authority to tell people where to sit. That was one of the arguments made against the bill. The Virginia Legislature had taken this police power and turned it over to the people operating the carriers in that regard.

Senator EASTLAND. They had attempted to delegate their police power.

Mr. KUYKENDALL. Yes. This girl was convicted, and on appeal it came into the United States Supreme Court, and in the opinion, which was in 1946 or shortly some time after that, they held that the Virginia statute was unconstitutional, because it was an attempt to regulate this matter in interstate commerce.

The States cannot go into that field, and I think that is a good example of what was meant by the fourteenth amendment.

We would not question the fact, but what any member of any race does have now under our present law, established in all jurisdiction, the full and equal rights to the facilities and accommodations of a carrier. What he does have is a right of segregation or separation of the races. The bill would deny that.

Senator MCGRATH. Is there a case pending now in one of the circuit courts testing this question?

Senator EASTLAND. I do not remember that, whether it was on that point or not. It is to be argued next fall. That was the National Jewish Congress, I believe.

Mr. KUYKENDALL. There are a series of United States Supreme Court decisions touching on practically every phase of the question from one to the other.

Senator EASTLAND. If I understand that civil-rights case, you referred to, which is one of the great cases, it declared this bill unconstitutional.

Mr. KUYKENDALL. Yes, sir. I will read the words of that. Here is the reason they gave for doing it.

> When a man has emerged from slavery, and by the aid of beneficent legislation has shaken off the inseparable concomitants of that state, there must be some stage in the progress of his elevation when he takes the rank of a mere citizen, and ceases to be the special favorite of the laws, and when his rights, as a citizen or a man, are to be protected in the ordinary modes by which other men's rights are protected. There were thousands of free colored people in this country before the abolition of slavery, enjoying all the essential rights of life, liberty, and property the same as white citizens; yet no one, at that time, thought that it was any invasion of their personal status as freemen because they were not admitted to all the privileges enjoyed by white citizens, or because they were subjected to discriminations in the enjoyment of accommodations in inns, public conveyances, and places of amusement. Mere discrimination on

account of race or color were not regarded as badges of slavery. If, since that time, the enjoyment of equal rights in all these respects has become established by constitutional enactment, it is not by force of the thirteenth amendment, which merely abolishes slavery, but by force of the fourteenth and fifteenth amendments.

On the whole we are of opinion, that no countenance of authority for the passage of the law in question can be found in either the thirteenth or fourteenth amendment of the Constitution; and no other ground of authority for its passage being suggested, it must necessarily be declared void, at least so far as its operation in the several States is concerned.

Senator WILEY. They held that in substance as far as the law that was passed after the Civil War was concerned, that so far as the Federal Government attempted to regulate this particular thing in intrastate commerce, it was bad, but they still maintained, did they not, that they had that function in interstate commerce?

Mr. KUYKENDALL. No, sir.

Senator WILEY. I thought it was, that is, the language you said indicated that.

Mr. KUYKENDALL. I think you have to read it in connection with the case of *Mississippi* v. *Louisville, New Orleans and Texas Railway Co.*, which was decided at practically the same time.

Senator WILEY. How did the statute read in the beginning?

Mr. KUYKENDALL. Do you want me to read it over?

Senator WILEY. Just the particular statute you are talking about.

Mr. KUYKENDALL (reading):

That all persons within the jurisdiction of the United States shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances, on land or water, theaters and other places of public amusement; subject only to the conditions and limitations established by law and applicable alike to citizens of every race and color regardless of any previous condition of servitude.

Senator WILEY. I can understand because of the general language there that most of it would apply to that would not have any reference to interstate commerce.

Mr. KUYKENDALL. What I meant by the statement that the case of the railroad company versus Mississippi throws light on the meaning of the court there is this: This civil rights case was decided in 1883, October 15. The Mississippi case was decided March 3, 1895, which is about 7 years later, upholding the validity of the Mississippi statute, as long as it applied to commerce solely within the State of Mississippi. They did not speak of interstate commerce in those days in the terms we speak of it now, and they held in the Morgan case that the Federal Government does have the right to regulate railroads; no question about that.

They furthermore held that this State cannot say under the "color" of the State law you cannot make passengers sit anywhere on an interstate carrier. There is no question about that. I think the Attorney General points out in his brief one of the reasons he wants these things passed is so every law-enforcement officer will know the law. The fallacy of that is what he has got in the bill is not the law. It is true they will know what is in the bill, but that will be entirely different from the present law, and I take issue with him on that.

We have all seen very much the difference in the way the carriers run this question here today from what they did 4 or 5 years ago, since this Morgan case proceeded to the United States Supreme Court.

All of the railroad companies have extensive legal counsel and they know the law and put it in operation.

The right of the individual to separate himself is a social right. It is not a property right, nor a civil right, so-called. A civil right is a right which a person would be said to have, due process of law, a trial by jury, those things which we fought for, that our ancestors fought for, and embodied in the Bill of Rights, written out clearly, and they did not want to deny any others which we have, whether they be social, civil, or whatever nature. The rights of the individuals here in the United States are our own. They are not handed to us on a platter by the Government or anyone else. And our constant fight must be to see that the Government does not take any one of them away. That is our fight here today.

You propose in the bill to take a right now enjoyed, not by the southerners or every white citizen but by every citizen in this country, regardless of race, color, religion, or anything else. The bill would take that right. It is a social right to go off with members of his own race or religion. It is the natural thing in people. We have always had wars, and we always will have them, and most of them are based on racial trouble, but the races live very peacefully here in the United States now; and I think, aside from the legal part of it, the longer either race agitates to take the rights of the other race the two races cannot get together.

Maybe there was a time when our white race was more guilty of this offense than the colored race, but today I would say the opposite race is now demanding rights which our race presently has enjoyed. This is a far-reaching bill, and I am sorry that I could not go into other phases of the bill.

Another member of our office has added a part to this brief dealing with the criminal charge there under the preceding part of the bill which would amend the present civil-rights law, and he points out that in these previous decisions of our Supreme Court, saying that they are unconstitutional, and that matter is not in any clear status like the present one.

The separation of the races I can safely say—and I think Corpus Juris Secundum agrees with me—that that part of this bill is unconstitutional. The recent decision of the Supreme Court in the Screws case, which incidentally cannot be quoted, they refer to the opinion that the Court agreed to reverse the case but could not agree on why they reversed it. The opinions expressed there are merely opinions of those Justices signing their names to it; and, of course, with changing personnel in the Court, it might make the law out of something that does not appear in any one of those opinions.

I would like earnestly to ask you in your spare time to go into this. Do not accept what I have said today, but just for the sake of finding out for yourselves take down Corpus Juris Secundum, volume 14. I did not know they had a section on civil rights. I thought the civil-rights cases were new enough. But to my surprise they have a very complete and comprehensive section in C. J. S. on the subject of civil rights; and, from all I have read of it, which mainly dealt with the separation of the races question, it is not conflicting; they have been able to take these decisions of the Supreme Court and they all fall into a pattern; and then, under the section of Corpus Juris Secundum on

carriers, we find that there are established rights in all of the State courts and the United States courts on this very subject of separation of races. There are lawsuits which can grow out of whether a person is put into the wrong compartment. There are established rights, vested rights, a right to be separated, a right of the individual, the right of the individual to demand from the carrier that, even though he is separated, he gets just as good accommodations as any member of any other race. That was the Mitchell case.

Congressman Mitchell bought a ticket from Chicago to Hot Springs, Ark., a round-trip first-class ticket.

Senator EASTLAND. That was Hot Springs, Ark.?

Mr. KUYKENDALL. Yes. His reservations were only made to Memphis. He had a sleeper going down. He got there and he found he had to have reservations on further, so he got the Pullman porter to slip him into a first-class accommodation on the train going out of there over to Hot Springs. The conductor came along and told him he would have to get out of there, that he could not accept his money, which he was ready to pay for the difference in these accommodations. He offered him the money to pay for it, whatever it would take to get there, but the conductor made him go out and go into the colored section of the train. All of this is in the record before the Interstate Commerce Commission.

Mitchell brought a complaint before the ICC, demanding that they investigate that and take some action against the carrier on the basis of what had happened to him. They took all of these facts down. They found that car into which the conductor put him was the second-class accommodation; furthermore, that it was entirely inadequate as a second-class accommodation, there being no rest room in it and there being no other facilities there which a person having his ticket was entitled to.

Senator WILEY. That was an interstate commerce ticket.

Mr. KUYKENDALL. Yes; it was. It was an interstate passenger. The ICC found all of these things to be true but dismissed the complaint. The district Federal court affirmed the action, and he appealed to the United States Supreme Court, and they found that the ICC had jurisdiction and that they erred in dismissing his complaint because he had bought a full first-class round-trip ticket and he was entitled to that service and accommodations. They said the mere fact that they had sold out all the reservations on that car did not justify the carrier in not giving him those accommodations.

They said the argument which had been advanced by the carrier that in that case was in Arkansas there were very few Negroes who would want to ride in this type of accommodation, and therefore they had never provided them before, and what they had done before when somebody would show up, a colored man, and demand that type of accommodation, that they just would give him one of the compartments in there, even though they did not charge him the compartment rate, but they would put him where he would be separated. They held that the fact that only a few people could be expected to use those type accommodations did not justify the carrier in this instance, and that it was the duty of the carrier where there are separations of races to furnish full and adequate accommodations to both races, which is, of course, the established law in State courts.

Senator WILEY. It was not on the ground of segregation, but on the ground of discrimination.

Mr. KUYKENDALL. That was it—discrimination.

Senator WILEY. Is that what they said?

Mr. KUYKENDALL. I think that is what the decision held.

Senator WILEY. He had a contract, did he not, a first-class contract?

Mr. KUYKENDALL. Yes. The ICC has long had jurisdiction over the discrimination on carriers. Many people thought that discrimination applied to the shipment of freight, but the United States Supreme Court opinion in that case leaves no question about that applying to the passengers.

Senator EASTLAND. You must give equal facilities. You can segregate. Is that what you mean?

Mr. KUYKENDALL. Yes, sir.

Senator WILEY. Has the Supreme Court gone as far as to hold what you claim that segregation is or is not discrimination?

Mr. KUYKENDALL. The most recent case I found on the question is the Bob-Lo Excursion Co. case versus the People of the State of Michigan, which was construing a statute similar to this passed by the State of Michigan. They held it valid. I will say that they stretched a point to do it, but we have an older case that stretched it just as far the other way.

We said that these laws cannot apply to interstate commerce. Years ago they had the instance in Kentucky of a trolley car which ran from Kentucky across over into Cincinnati, a distance of not more than 5 miles. People working over there rode that back and forth. The Kentucky law required separation of passengers on all conveyances. The question was brought up to the United States Supreme Court as to whether that could be enforced against that trolley company. They convicted them under this law. The Court had already had another case on this same company and heretofore decided they were doing a business of an interstate nature. They did not say they were engaged in interstate commerce within the commerce clause of the Constitution, but, anyway, when that conviction of this company for failing to provide those separate accommodations on that trolley came up to the Supreme Court, the Court said that the State police regulations were valid and prevailed against that trolley car because the nature of their operation was mainly to serve the people of Kentucky to get to work, and that it did not in any way interfere with interstate commerce as such.

In the Bob-Lo case you had the opposite type of statute saying there will be no discrimination, and you had an instance of this excursion company in Detroit which owns practically an entire island, which lies about 15 miles north of Detroit across the international border, near Ontario. That is in connection with a resort which they run there—a sort of Coney Island, evidently.

From the opinion, they run a boat back and forth to this island, hauling the passengers out of Detroit up there. You buy a ticket. That is the only place you can go on that boat—to the island and back.

Well, what happened in that case was that a colored girl with about 14 or 15 other members of her high-school class decided to go up there on an excursion, and the Court pointed out that for years the excursion company had exercised a policy of excluding two types of people from that island, one being the colored race.

They went down and bought the tickets—that is, one of the girls buying all of the tickets—and then they all went aboard the boat. They had been there for several minutes when an officer of the company came up to the colored girl sitting there and told her that she could not go because of color. She would have to leave the boat or else they would call the police and force her off. She then left under protest.

The company was convicted under this Michigan law, the nondiscrimination law, and the company appealed to the United States Supreme Court, contending that the law did not apply to them. They argued in that case that they were not operating a public conveyance. The Michigan statute, like this statute, says public conveyance, but unfortunately for them the Supreme Court of Michigan found that they were operating a public conveyance, and our United States Supreme Court has always before accepted the finding of a supreme court as to the law of the State and said that they are bound on that, and going on from there they went, I think, a good bit around the hedge; they declared the law valid so long as it was a State operation, and in doing so they did not conflict with the previous decisions, because that Covington case was almost similar in circumstances. They pointed out that the operation of this boat, the whole thing was an operation right there in Detroit. It was an adjunct to this city of Detroit, and furthermore they pointed out an offense had been done to the girl which has always been a wrong under our law, which is the denial of any passage at all on a public conveyance. In other words, right now it is the law you cannot deny a person in any State in this Union passage on a public carrier because of his race, color, or because of any other reason. If it is open to the public, they must take them, if they have accommodations, of course.

They are two entirely different questions, the question of discrimination and that of segregation. They are entirely different, and the question of segregation itself is just like a statute that would make dunking illegal. We have never had a legal precedent on dunking itself or some other act there that has been known, and we have all done it and we generally understand what it is.

It is true that the courts may take many of the things that I have pointed out out of these acts; in fact, the Northern States today, in construing their own discrimination statutes, have been very hasty to point out that they do not and cannot regulate the social affairs of people.

Senator WILEY. In the Michigan case it was clearly an antidiscrimination case. I wondered if the Court said something to the effect that, if the Commonwealth of Michigan had passed a statute that would have provided that separate and equal accommodations for the blacks and whites were provided, that such would not be invalid?

Mr. KUYKENDALL. I think they did.

Senator WILEY. Did they say something in that case about that?

Mr. KUYKENDALL. The Court said this——

Senator WILEY. They had a beautiful chance to clear up a few things.

Mr. KUYKENDALL. This is from the opinion:

All persons within the jurisdiction of this State shall be entitled to full and equal accommodations, advantages, facilities, and privileges of inns.

That is the statute. Do you want me to read their statute there? It is practically the same as this here, practically the same as that statute in the old case.

Senator WILEY. I was wondering in the opinion whether or not they rationalized the rights in relation to that?

Mr. KUYKENDALL. Justice Rutledge stated that the single narrow question for its decision was whether the State courts correctly held that the commerce clause, article I, section 8, of the Federal Constitution, does not forbid applying the Michigan Civil Rights Act to sustain the company's conviction, adding that—and this is from the decision—

> The Michigan statute is one of the familiar types enacted by many States before and after this Court's invalidation of Congress' similar legislation in the *Civil Rights cases* (109 U. S. 3).

That is a very recent one.

There is a 1948 opinion of the Supreme Court saying this; it says that this Michigan statute is similar to this act in that old civil-rights case. It pointed out that, although the company's transportation of its patrons is foreign commerce within the scope of the commerce clause of the Constitution, it was, in fact, a business carried on in Detroit and its immediate vicinity for the people of Detroit. And the Court said this:

> Of greater concern to Detroit and the State of Michigan than to Dominion of Ontario interests or to those of the United States in regulating our foreign commerce—

and they pointed out as an entirely local concern limited to people traveling from Detroit to the island and back for recreational purposes, and then, from the decision:

> The business itself is economically and socially an island of local Detroit business, although so largely carried on in Canadian waters.

The Court found that the particular facts of this case under the Michigan statute did not impose any undue burden on "defendant in its business in foreign commerce."

The Court reconciled its previous decisions in the case of *Hall* v. *DeCuir* and *Morgan* v. *Virginia*, supra, by saying:

> That no one of those decisions is comparable in its facts, whether in the degree of localization of the commerce involved; in the attenuating effects, if any, upon the commerce with foreign nations and among the several States likely to be produced by applying the State regulation; or in any actual probability of conflicting regulations by different sovereignties. None involved so completely and locally insulated a segment of foreign or interstate commerce. In none was the business affected merely an adjunct of a single locality or community as is the business here so largely. And in none was a complete exclusion from passage made.

Skipping over:

> * * * The ruling would be strange, indeed, to come from this Court, that Michigan could not apply her long-settled policy against racial and creedal discrimination to this segment of foreign commerce, so peculiarly and almost exclusively affecting her people and institutions.

The Court then emphasized that in this case the complaining witness had been completely excluded from passage on the carrier and that the common-law duty of carriers has long been to provide equal service to all:

> A duty which the Court has held a State may require of interstate carriers in the absence of a conflicting Federal law.

And then they affirm the Michigan court decision, and they did not cite in that opinion the South Covington Railroad, which I think is almost directly in point with the holding here on the opposite statute. They spent most of the time trying to get out of the way the old *Hall* v. *DeCuir* case, which was that Louisiana statute exactly like which the United States Supreme Court held unconstitutional because it interfered with interstate commerce.

They rationalized because of the facts, and that is exactly what they have done in the South Covington case, they said the facts there did not bear that out. Mississippi and some other States went so far in the years lying between the civil rights case, that period and today, I think, in holding that those statutes, the Supreme Court had stated they were, but the United States Supreme Court decision is perfectly clear on the subject.

In one of the concurring opinions, one of the judges pointed out if they wanted to act as superlegislature, he would go along with them. I do not think they have done any particular legislating that was not comprehended by the judges who wrote the civil rights cases many years ago.

I think the civil rights cases are an unusually clear expression of what is being decided in the case. I think the facts in every case are the important key to what a court decided there, because we sometimes have a hard way of expressing ourselves, but in the civil rights case it is not only clear and logical but it has been strong enough to stand up to this time.

Are there any questions?

Senator McGRATH. It has been a very interesting discussion. It will be interesting to read your brief. That will be incorporated in the file.

Senator WILEY. I would like to get his reaction on one or two things. I am trying to rationalize the situation. Your right and my right to personal segregation, I stand for that.

Senator McGRATH. We practice that in the Senate. We put the Republicans on one side and the Democrats on the other.

Senator WILEY. You put us in the hole every opportunity you get. But now we are coming to that again, the right of the Commonwealth. I was very much interested in your distinction that you made, the right of a Commonwealth, as distinguished from the right of the individual or the right of the group to practice segregation. The right of the Commonwealth to segregate the groups is another thing. That is what I am wondering, whether or not the Court has definitely shown the distinction there. In other words, you and I now go into another room and segregate ourselves from this group of people, the right of the Commonwealth to say that the other two fellows and you and I can go into the same room. Do I make myself clear?

Mr. KUYKENDALL. Yes.

Senator WILEY. That is the thing in my mind that I want to get cleared up. We are talking about civil rights. A civil right, and I am wondering again whether or not the Supreme Court has recently given us a definition of a civil right, whether there is an extended definition or clarified definition.

Mr. KUYKENDALL. Here is the definition Corpus Juris Secundum gives. I do not have the cases, that it is based on:

A civil right may be defined as one which appertains to a person by virtue of his citizenship in a state or community, a right accorded to every member of

a distinct community or nation, or a right which the municipal law will enforce at the instance of a private individual for the purpose of securing to him the enjoyment of his means of happiness.

They went on in the same section to say that civil rights are distinguishable from natural rights which would exist if there was no municipal law, some of which are abrogated by municipal law, while others lie outside of the scope and still others are enforceable under it as civil rights. Natural rights as such appertain essentially to man such as are inherent in his nature, and which he enjoys as a man, independent of any particular act on his side. Civil rights are also distinguishable from social rights, and then the statement that purely social relations of citizens cannot be enforced by law, which is from an Iowa decision, I believe.

Senator McGRATH. There are certain of these rights, too, of course, that you speak about, the right of the individual to segregate himself, that is a right of a natural person; I will grant you that. That is not the right of a corporate person, to require the individuals to exercise their own right for segregation, and yet that is what you have, assuming that the railroad company required segregation in a railroad car. The corporate individual thereby takes away the right of the human individual.

Mr. KUYKENDALL. He is not carrying, the carrier is not carrying, a person because he is a citizen of the United States. He is carrying him because he pays a fee for that.

Senator McGRATH. It sets up a law which assumes to take away what you declared to be our individual right of segregation.

If a railroad company has that right, then certainly you cannot deny that the Congress of the United States would not have a superior right—at least an equal right, if not superior—and then it seems to me that there are certain individual rights that we enjoy as individuals, and we can do things as individuals which we cannot do in a combined conspiracy, so to speak. In other words, there are many things that I have a right to do as an individual which I cannot join with Senator Wiley and Senator Eastland and do as a group. And I think this is probably one of them.

We have a right to collectively, I suppose, say we are going to leave this room if certain people come in it. But that is our privilege, but it is not our privilege to combine together and say we are going to prevent people from coming into a room when they have an equal right to be in that room with our own right.

Mr. KUYKENDALL. Could you not as a group get up and leave that room and go elsewhere?

Senator McGRATH. Yes.

Mr. KUYKENDALL. You are paying for the room. That is all of the space in it. To whoever owns the thing could you not make as one of your conditions that only people you want in there will be in there?

Senator McGRATH. Yes; I suppose we could; and we would then have leased or chartered it. But you do not do that when you segregate on a railroad train in interstate commerce. The white people do not pay for all of the accommodations. They only pay for part.

Mr. KUYKENDALL. That is true. But under the present Supreme Court ruling, my statement is this: The Supreme Court has interpreted what you had in mind doing.

Senator WILEY. I want to follow through this thing I started here, because I do not see the analogy between what he said. These

statutes, a business like public utilities, a railroad, covers an inn, which is generally required to have a license of some kind. I do not remember what else it covered. My question was not your right and my right if I run a railroad or if I run an inn. My question was the right of the Commonwealth who has given life to the railroad, who has got its corporation to pass a statute and you said the Supreme Court said that such statutes are O. K., to say that this right, I am a colored person or a white person, that this right that you enjoy on this public utility is subject to the contract that is made by virtue of the legislative enactment, to wit, that there will be segregation, but no discrimination. The right of the Commonwealth—that is the thing I am getting at there—to say that to citizens, and you step back and you argue there are some basic reasons that you could give. There is, of course, the matter of the social contract that we all have with society. You would not have any question or there would not be any question that regulations saying that a group of roughnecks, you would not even permit them to drink on trains, and you violate the law. Have your own bottle. That is the statutory law in some places. You make that restriction. But here is the Commonwealth that comes in and says in substance that John Jones and Sam Smith, who are white and black, respectively, have to be segregated if they ride on a public carrier in this State.

Have you taken any right away from the individual, inherent right? Apparently the courts have held no; that that can be done.

Mr. KUYKENDALL. By the State.

Senator WILEY. By the State, and they have held that if the Federal Government wanted to pass a similar statute, it was not taking away from either black or white the inherent right; is that right?

Mr. KUYKENDALL. My understanding is that the State can do it, but the Federal cannot do it.

Senator WILEY. I am talking about interstate commerce.

Mr. KUYKENDALL. I am talking about any kind of commerce, because of the civil rights decision. That is what it was. The reason they cannot do it, as pointed out in the civil rights decision, the only reason that a State can do it, we will put it that way, is an exercise of police power, which the States and the court held valid, found necessary to police the people in that area.

Some day conditions may exist where it will no longer be reasonably necessary for a State to do that.

Eenator EASTLAND. Like they police whisky drinking.

Mr. KUYKENDALL. Any person that will still argue that a person has inherent right to possess whisky, but our Mississippi Supreme Court held recently that he does not. We are a dry State. It is a matter of time, gentlemen. You have a problem which has been in this country and has been a burning issue here for many years, and the best minds in the country have devoted many hours of thought to it. No individual, I think, has done as much for the cause of solving it as time itself has, as time goes by people thought they could not stomach some things before and then they find they are not so bad after all.

Senator MCGRATH. Thank you very much.

Mr. KUYKENDALL. Thank you.

Senator MCGRATH. We will be glad to have you come back and discuss other sections of the bill if you care to after you have an opportunity to brief them.

Senator WILEY. How old are you?
Mr. KUYKENDALL. Thirty-three.
Senator MCGRATH. I understand, Senator Kefauver, that you want to make a statement.

STATEMENT OF HON. ESTES KEFAUVER, A UNITED STATES SENATOR FROM THE STATE OF TENNESSEE

Senator KEFAUVER. I want to make a brief statement at this time, if I may, and then I would like to have authority to within a week or 10 days file a more detailed memorandum on some of the details of the bill; inasmuch as the bill rewrites some of the sections or enlarges upon some of the sections of the civil-rights statute of 1870, it is rather difficult without examining the two together to see just what parts of the bill do that. Before the hearings are concluded, I should like that privilege, if I may.

Senator MCGRATH. We continued the hearings for 2 weeks so the record will be open at least that length of time, I am sure.

Senator KEFAUVER. Then within 2 weeks I will have this more detailed memorandum.

I am glad this issue is before the committee which will give the subject cool judgment and plenty of time for development. The general observation I wish to make, Mr. Chairman, is that will this bill help the situation that is in the minds of this committee, and very much in the minds of the people of the country.

Senator WILEY. You mean if it becomes law, will it help the situation?

Senator KEFAUVER. That is right, or make it worse. It seems to me that we must start off with the major premise that no law is going to do any good unless it has the backing of the major part of the people that live in the particular territory that is affected. This bill in my opinion would be likely to further agitate a situation, and I do not think it would help any or help bring about a remedy.

I do want to call to the committee's attention that in the Southland, I think in most of the States, probably some more han others, there is a real effort being made by the Chief Executives, by most of the law-enforcement officers, by people generally, by newspapers, by citizens' committees, to try to improve the problem that we have had for a long, long time. Mr. Chairman, it is not going to be done overnight. The passage of a law as we all know will not bring about the remedy. It is a long-range matter of understanding, education, of working problems out together.

The result I think that this law would have would be to diminish and decrease the great effort that is being made locally. We have just read, and none of us can condone the wearing of the mask or the activities of the Klan, or of any other groups that do operate, and it is encouraging to see that the Legislature of the State of Alabama, the legislatures of other States, and chief executives and citizens' committees have been organized in the first place to crystallize and to unify public sentiment in those sections against that kind of activity, and at the local level, where laws and enforcement of laws are most effective, to do something about the problem.

Whenever there is a granting of power or the exercise of power by the Federal Government, taking away from the obligations of the local people, then there will be a diminution or lessening of what they are trying to do.

Senator EASTLAND. Will there not be resentment?

Senator KEFAUVER. There will be resentment, and that I think is probably what would happen here. If the Federal Government takes this in its hands, in the first place there will be resentment on the part of a lot of people. Central Government is taking this over, so do not put this on. We do not like it. They want to cram it down our throats. We are trying to do something about it.

On the other hand, if we can encourage the local people by helping them, by suggestion, by understanding, cooperation, we will get, then, I think, much further.

I know, Mr. Chairman, I am very often criticized on the grounds of alleged liberality, and this, that, and the other. I think I do try to be as tolerant and understanding as anybody can be. But this type of thing simply will not help bring about the solution that I know the committee, and all of us in Congress would like to see brought about. I think we have to recognize that any law that is passed here, unless it has the backing of the people in the section, or at least a large part of them, a majority of them, it will not be effective. It will just further increase some of the difficulty. That is my general feeling about it.

There are provisions in here that I have some comments on. I have not had time to study the bill in detail, but suppose we take on page 10, 241 (b), aimed at going in disguise on the highway. Of course that should not be. We want to do the most effective thing to prevent it. The States, I think, and I am very much encouraged by what they are doing, I think they realize the burden of doing something about this problem is on them, and I see evidences, I am sure all of us see evidences of really moving in. You will not have perfection immediately but I think we will have a remedy much quicker than if we made it a Federal offense.

Then here is another provision I notice about section 241 (a), two or more persons conspire to injure, or press, 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. I have always understood that any right, however small, that is secured to a person, this would come under the definition of any right or privilege to a person to by the law of the United States.

For instance, a right of free speech that might be guaranteed by this labor law we are now considering.

Senator MCGRATH. I believe that is the law at the present time. The only change there is that the present law, as I understand it, refers to citizens of any State, and it is changed now to refer to inhabitants.

Senator KEFAUVER. Then my remarks are not pertinent.

But what I was going to say was that this might apply that penalty, and I think perhaps the law ought to be further clarified to a person who violates small matters, like depriving one of his right to free speech on a labor election or in the enforcement of an OPA statute. But anyway, if that is the present law, then my remarks have no application.

Section 242, for instance, what is going to happen to a poor honest citizen like John Jones who gets caught between the provisions of State statute and a Federal law? He is working for a carrier. He does not know the difference between interstate and intrastate commerce, and he carries out the orders of his employer by violating section 242. He does not know which law to follow. There are two laws on the subject. He is subjected to a fine of $1,000 or imprisonment not more than a year.

I do not think we help a general picture of law enforcement or respect for our Federal statutes by placing a person in a situation where the State law is one way and the Federal law is another way, and he does not know which to follow. It is liable to create general disrespect for all laws.

We know as a matter of practical common sense that if this statute were passed, that until this gradual process that is now going on has time to take effect, there will be thousands of violations every day. A law, unless it is enforced, is no better than no law. We do not want to breed disrespect or lack of thoughtfulness for all of our laws. There are many of us, I think a great majority of the people in the Southland, we realize that we have a problem, one that we inherited. It is not one that came about by our own wishes, and I know there have been many people who have done things wrong. There have been mistreatments of people. We regret that, but I feel that we are in our own way trying to bring about a solution just about as fast as the philosophy and the tendency of the people's background will permit.

Generally, I do not think this law would help us in the effort we are making.

Senator McGRATH. Thank you, Senator.

That is all of the witnesses for today. We will recess the hearing.

Senator STENNIS. May I ask a question?

Who would suffer from the operation of this law, which group, the white group or the colored group?

Senator KEFAUVER. I am afraid that both groups would suffer. I am afraid that it would antagonize things more. I think that some places, as a result, say, of many arrests and prosecutions and the courts full of cases which would be the case if this law were passed and provisions were strictly carried out, we would have a situation of turmoil where we would be at one another's throats.

Senator EASTLAND. Do you think anybody would be convicted?

Senator KEFAUVER. They provide here for Federal jurisdiction, and I do not think there would be many convictions. The breach would be so often that if they really tried to prosecute everybody that breached the law, then I am afraid there would be a great deal of increase in hard feelings between people.

Senator STENNIS. Severity on relations between the races would be general, rather than just isolated cases; would it not?

Senator KEFAUVER. I fear it would.

Senator McGRATH. You mean so many violations of the civil rights in this area that if we attempted to stop them we would jam our courts with cases?

Senator KEFAUVER. Of course, I want to say this in justice, I do not think that 99 percent of the people in practicing what this law outlaws feel that they are violating any law. That is the trouble. They do not feel that there is any law that is violated. It has been

there for years. That is the way they have lived. People generally, until gradual process changes things, will live as they did in the past. They are not aware, and they do not think in most cases they are violating the law. I am afraid to pass a law like this, an over-all provision that frankly there would be so many violations that it would do that.

Senator WILEY. I wanted to say they say that out of the mouths of babes sometimes wisdom comes. I have heard from one of your distinguished associates of the Democratic Party from the South on your side who has made a great statement, and that is to the effect that there are social ills and economic ills that cannot be cured by mere legislation. That is what you mean?

Senator KEFAUVER. That is right. I do not mean that we should not keep on our very definite effort. So far as I am personally concerned, I will be very frank with you. I have always despised the poll tax. I want to see us get rid of it. In Tennessee we repealed the poll tax by law some 8 or 9 years ago, and our Supreme Court held the repealer unconstitutional. On this occasion the legislature repealed it as to women, as to veterans, as to new voters, and as to people over 54. That is about as far as they can go under the Constitution. I would like to see us get rid of that. I would like to see more participation by Negro people in elections all through the South. Certainly I am only speaking for Tennessee. I want to see them have every educational opportunity and everything else that anybody else has, and if we can follow that program gradually, why, I think that is the only way we will ever permanently cure this difficulty that we have.

Senator STENNIS. Let me say that the point I was attempting to direct to the committee a while ago was that the passage of this law would stir up antagonisms and clashes between the races that do not exist now, not that there would be so much violation of it as to clog the courts, although there would be violation. It would stir up clashes and conflicts that do not exist now, and thereby create new problems far more than it would solve.

Senator EASTLAND. We have no racial friction, in fact.

Senator STENNIS. Now, we do not have; isolated instances, but certainly not beyond that.

Senator EASTLAND. Certainly we have isolated instances in Mississippi.

Senator MCGRATH. That is always so when people have to live under the law of fear, of course. They do not raise any fuss about it.

Senator WILEY. I would like to ask Senator Kefauver a few questions, because he is right in the section that is pretty much involved in what we think is a racial situation.

We have the authority to do a lot of theorizing at times, but we do not live with it, as has been said.

Here is what I am getting at: If you should be able to pass a law that would make it the function of the Federal Government when and if some such, let us assume that it would be held that the law was constitutional, you would pass a law that it was the function of the Federal Government to step in under the thesis of violation of civil rights, where do you suppose that would finally take us? Is there any greater civil right than a man's right to liberty or right not

to be shot and right not to be assaulted, a woman's right not to be raped? Is there any greater right than that? Does the Federal Government go in on those millions of cases? If they are, they will have to go up into New York and Chicago, all of those cases, and where would it take us? I know they would say under the present idea no, that is not a civil right the Federal Government has anything to do with.

Senator McGRATH. It is a natural right.

Senator WILEY. Inherent right, then.

Senator KEFAUVER. I think that is pertinent. I think we ought to do everything we can for the time being educationally, for housing. I do not think that in the South, in all parts of the South, we have done right by the Negroes. Some of the housing conditions are atrocious. Some of the school conditions also. But we are making progress. That is the point I want to make. We are making progress, and I think if you compare the health and the living conditions, even the kind of farming that Negroes were doing 20 years ago with what they are now, it is quite apparent that we are getting better. But it will not be done this way, I don't think you can pass a law that will work to clear up and settle all of the things we have grown up with for all of these years overnight.

As Senator Wiley said, I would dislike to see the Federal Government get into every field of criminal activity. If we can keep as many of these things in the States as possible, I think we will have more local interest. Maybe in the long run we will have better enforcement.

Senator McGRATH. The hearings will be recessed until 2 weeks from Thursday.

(Thereupon at 4:45 p. m., a recess was taken until Thursday, July 14, 1949, at 10 a. m.)

CIVIL RIGHTS

THURSDAY, JULY 14, 1949

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

The subcommittee convened at 10:40 a. m., pursuant to recess, in room 424, Senate Office Building, Senator J. Howard McGrath, chairman of the subcommittee, presiding.

Present: Senators McGrath and Eastland.

Also present: Senator Stennis and Long; and Robert B. Young, professional staff member.

Senator MCGRATH. The hearing will be in order.

Our first witness this morning is Mr. Perez.

Mr. Perez, this subcommittee of the Judiciary Committee is taking testimony with respect to S. 1725 principally, a bill to provide means of further securing and protecting the civil rights of persons within the jurisdiction of the United States. You may proceed to make such statement as you wish with respect to the legislation.

STATEMENT OF LEANDER H. PEREZ, DISTRICT ATTORNEY OF THE TWENTY-FIFTH JUDICIAL DISTRICT OF THE STATE OF LOUISIANA, APPEARING AS SPECIAL REPRESENTATIVE OF THE ATTORNEY GENERAL OF THE STATE OF LOUISIANA

Mr. PEREZ. Mr. Chairman and gentlemen of the committee, my name is Leander H. Perez, district attorney of the Twenty-fifth Judicial District of the State of Louisiana, and I appear as a special representative of the Attorney General of the State of Louisiana with his authority to oppose either the favorable report by this committee or the enactment by the Congress of S. 1725 and its companion measures, the so-called civil rights bills.

Senator MCGRATH. Now are you going to testify with respect to S. 1725? Some of these civil rights bills of course are not before this subcommittee. I notice your statement refers to FEPC. FEPC is not before this subcommittee.

Mr. PEREZ. I understand so. I have only a very brief statement in my memorandum regarding to FEPC but only with respect to its intimate relationship with S. 1725. I did not intend to go into an exhaustive discussion, however, of S. 1728, the FEPC bill.

Senator 1725 contains a preliminary statement which I take it is calculated to be a policy statement, that——

The Congress hereby finds that, despite the continuing progress of our Nation with respect to protection of the rights of individuals, the civil rights of some persons within the jurisdiction of the United States are being denied, abridged,

or threatened, and that such infringements upon the American principle of freedom and equality endanger our form of government and are destructive of the basic doctrine of the integrity and dignity of the individual upon which this Nation was founded and which distinguishes it from the totalitarian nations.

As a matter of fact, I submit to the committee and to the Congress for consideration that what distinguishes the United States as a Nation is the fact that the civil liberties of the people of this country are not subject to policing by the National Government as they are in totalitarian states and that S. 1725 and its kindred so-called civil-rights measures would place the people of this country and of each and every individual State under the constant threat, cloud, and oppression of the Federal police and would thereby extinguished successfully the great difference between what this country has been under our constitutonal form of government which protects and reserves to the people of every State their rights of liberty and freedom from oppression, freedom from policing, from any national policing, or, to use the term that we understand which is used in these foreign states, so-called totalitarian states, a national gestapo.

If these bills should, to the great misfortune of the American people, ever become the law of the land, then America would become a totalitarian state contrary to the provisions of the so-called policy stated in the first part of S. 1725.

As part of the policy stated in S. 1725, on page 3 the statement is made that the purpose of this legislation is—

To safeguard to the several States and Territories of the United States a republican form of government from the lawless conduct of persons threatening to destroy the several systems of public criminal justice and frustrate the functioning thereof through duly constituted officials.

That statement, I am sure, is taken from the report of the President's Committee on Civil Rights entitled "To secure these rights" which was reported in 1947 at page 111:

The committee conjectures that there may be some power derived from the republican form of government clause in article IV, section 4, of the United States Constitution. * * *

and they give an analysis which they say is broad and which might be seized upon to base action by Congress to exercise its power over the civil rights of individuals in this country. But by their own statement they acknowledge the weakness of their position which has been adopted in part of the statement of policy of this bill, S. 1725.

Then again in a statement of policy the bill, on page 3, again follows the line of the report of the President's Committee in 1947 which seems to be accepted as the bible of so-called civil rights by the administration and minority-group agitators for such unconstitutional legislation, and in subparagraph (iii), section 2, of the bill it is stated that one of the purposes of the bill is:

To promote universal respect for, and observance of, human rights * * *,

which is a cry or statement found repeatedly in the civil-rights laws of the totalitarian states without, however, any of the provisions of the American Bill of Rights with which we are familiar and which has protected the rights of citizens of this country and of every State since the founding of this country and the writing of the Constitution in 1787. But this bill states that one of the purposes is—

To promote universal respect for, and observance of, human rights and fundamental freedoms for all, without distinction as to race or religion, in accordance with the undertaking of the United States under the United Nations Charter.

As a matter of fact, having the bible before them for consideration, which was followed in principle or lack of principle throughout the bill, the author of the bill apparently referred to page 111 of this President's Committee report in which is quoted article 2, section 7, of the United Nations Charter, and I quote:

> Nothing contained in the present charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State or shall require the members to submit such matters to settlement under the present charter. * * *

So that I submit the statement of so-called policy coming under the provisions of the United Nations' Charter is not well-founded, nor is there any obligation on the part of this country to adopt such laws to impose upon the people of this country restrictions and the Federal policing of their rights and liberties as is provided in this bill.

The policy statement also indicates that there is an obligation under the so-called Universal Declaration of Human Rights. In the reading of the Declaration of Human Rights sponsored by the United States member on the committee which drafter this declaration, one will find that none of the Bill of Rights safeguards of our Federal or any of our State constitutions is provided in the Declaration of Human Rights, but it does provide for the certain destruction of America as we have known it and as it has been throughout the years because the Universal Declaration of Human Rights, for instance, provides for a guaranty to the peoples of the world freedom of movement in any state.

If that is to be considered a treaty, which it is not but in its declaration of policy it is treated with the dignity or solemnity of a treaty obligation, then such provision in the Declaration of Human Rights would let down the bars of immigration and would prevent Congress from passing any laws regulating selective immigration in this country and would throw open the doors wide to the entry in this country of hordes of Communists and undesirables and subversive elements from all over the world. Certainly, that in itself would be enough to destroy this country as Americans have known it and as Americans have progressed under their right of free enterprise and personal liberty and freedom to the greatest Nation in the world. And who among us who have taken the oath to support the Constitution of the United States would be a party to destroying our country by such indiscreet, to say it mildly, provision of the Universal Declaration of Human Rights which is now sought to be supported as a policy of the United States Congress.

Then again the Declaration of Human Rights follows the line of the report to the President on civil rights and provides for freedom of marriage regardless of race and so forth. That is a condition, I am sure, which neither the colored nor the white population of this country want to have imposed on them, but it also provides for penalties for the violation of any of those rights and it indicates and as a matter of fact there is a provision or resolution pending before the United Nations to implement the Declaration of Human Rights and the proposed international bill of human rights, which is based upon the Declaration of Human Rights, to set up an international tribunal for the trial of violations of any of these provisions of the Human Rights Declaration to be embodied in the international bill of rights, if

ratified by the Senate of this Nation and of the countries, members of the United Nations.

Senator EASTLAND. Could the International Court extradite a Governor of a State?

Mr. PEREZ. Senator, I was going to get to that.

The United Nations also has formally adopted what is called a Genocide Convention. On some occasion a few months ago—I think it was on Freedom Day—the President of the United States issued a proclamation stating that the Government of the United States and the people of the United States wholeheartedly embraced the principles and provisions of the Genocide Convention. I daresay there was not the smallest fraction of 1 percent of the people of this country who had ever heard of a Genocide Convention and it took considerable research by the American Bar Association to get a copy of the Genocide Convention. As a matter of fact, the Declaration of Human Rights, I learned from the American Bar Association office, was not even available in the State Department on request after it was ratified by the United Nations' committee in Paris.

But the Genocide Convention is along the same line as this proposed civil-rights legislation and Declaration of Human Rights and prohibits what we are all opposed to, of course, and that is racial or religious group murder or the assaulting of such groups. But it also makes it an international crime to cause "mental harm" and I quote "mental harm," to any of an opposite or different racial group or different religious sect, mental harm or mental anguish, and it provides for the extradition of any parties charged with violation of the Genocide Convention, including the prohibition against the causing of mental harm. It is provided specifically that the contracting nations shall cooperate in the extradition of any of its citizens, including its officials, for trial by an international tribunal.

We might recall it was stated in the Declaration of Independence among the long list of grievances against the British Crown by the people of the American Colonies, that they have deprived us, the people of our Colonies, of the right of trial by a jury of their peers, they have shipped us overseas to be tried by foreign tribunals without the protection of any of the laws guaranteeing fair trial to the American Colonies.

Mr. Chairman and gentlemen of the committee and Congress, by what peculiar abnormal quirk or twist of the human mind could anyone sworn to uphold the United States Constitution be a party to visiting upon the American people in the name of protecting their civil rights such indignities and oppression?

Senator MCGRATH. The answer is that there is no such implication in S. 1725. It is just another distortion of the meaning and purposes of the effort of this Government to secure the civil rights of certain segments of our population.

Mr. PEREZ. Mr. Chairman, I differ with you.

Senator MCGRATH. You have that privilege.

I simply want the record to show that I do not regard your testimony up to this point as being pertinent to the bill at all.

Mr. PEREZ. Mr. Chairman, I am simply trying to analyze the policy statement which is a preliminary part of S. 1725 and I am trying to confine myself to its provisions, and subparagraph (iii) of paragraph (c) of section 2 on page 3 embraces in the policy of Congress "the

undertaking of the United States under the United Nations Charter" in the Declaration of Human Rights.

I can point later to the fact that the Attorney General, Mr. Clark, in his statement, says that assistants in the Civil Rights Division of his office assisted in drafting these nefarious conventions and declaration of the United Nations which would subject the American people to the status of Russians, Yugoslavians, Latvians, and other unfortunate people behind the iron curtain, and that is what the American people are faced with together under the threat of the hypocritical so-called civil-rights legislation. As an American, as an officer of the State sworn to support the Constitution of the United States, just as the Members of this Congress are sworn to support the Constitution of the United States and just as our misguided representatives are sworn to support the Constitution of the United States, and who are treacherous to the people of the United States in being party to writing such conventions in the United Nations and then submitting them to the Congress for ratification, I say that it is, with due respect, Mr. Chairman, pertinent to the issues here because it is the very crux of the entire civil rights movement. And the American people cannot take it lying down.

We all have a stake in this country. My two boys fought in the last war and risked their lives to preserve the American way of life. They were mighty fortunate to come back. Thousands and thousands more did not come back.

Do we not know that these propositions to police the civil rights of the American people, do we not know that this civil-rights bill which smacks of the provisions of the Russian, Latvian, and Yugoslavian constitutions, which have made slaves of those people, are all unconstitutional and beyond the power of Congress? Are we American people to sit idly by and see our rights threatened to be trampled upon and destroyed?

I say to you, Mr. Chairman and gentlemen of the committee and Congress, that this is a dire conspiracy against the rights and liberties of the American people, and it cannot be successfully contradicted by straightforward, honest analysis of the provisions of the bill measured with the provisions of the Constitution, measured with the provisions of the Declaration of Independence which preceded it, and measured with every decision of the United States Supreme Court in point.

This country had an unfortunate epoch in its history. Following the War Between the States, because of bitterness and because Congress fell in the hands of perverted Americans, so-called statesmen, similar civil-rights laws were enacted. We know what that history records. Do we want to reenact that scene of American history? Why should any American; why, above all, should any American official, sworn to uphold the United States Constitution, be a party to such a nefarious scheme, with the light before us, is beyond understanding or appreciation.

In 1944, when similar legislation was before the Congress, the Attorney General in April 1944 advised the Labor Committee of its unconstitutionality. The so-called Civil Rights Commission in its report to the President insinuates that the present-day Supreme Court might be prevailed upon to change those decisions. Are the American people just to be a pawn in the hands of politicians to satisfy their greed for power and personal aggrandizement by playing up to minority groups, unpatriotic and unthoughtful of our American traditions

of way and life and government? Read the statement of the United States Attorney General before the committee and find, if you can, any basis of justification under our Constitution for this legislation. He refers to the fourteenth amendment in opening and to the fifteenth amendment and cites them, but does he cite a single analysis or a single decision of the Supreme Court sustaining the power of Congress or the Federal Government to invade the rights of the people in the right of self-government and the organization of their State and local governments to shape their own destinies and to protect their own personal rights and liberties? I say to you, Mr. Chairman and gentlemen of this committee, Mr. Clark, the Attorney General, fails miserably because he had nothing to stand upon.

But the Attorney General in 1944 was forthright enough to advise the congressional committee of the unconstitutionality of the proposed legislation.

But what would this legislation do to satisfy possibly the ambitions for more power in the Department of Justice? It would place in the Department of Justice a special section backed up by unlimited hordes and numbers of additional secret Federal police with the right to police the civil rights of every individual citizen of the United States. Is that totalitarian? Is that the trend that this legislation is following or that the administration is following?

What is the crux of the report of the President's Committee on Civil Rights labeled "To secure these rights"? On page 6 I say to you there is the crux, the heart or heartless core of a conspiracy behind this report and behind this proposed legislation to carry out its purposes, and I read:

> It is the purpose of government in a democracy to regulate the activity of each man in the interest of all men.

If that is not the Russian ideology, then what is? What kind of democracy? The kind of democracy that Joe Stalin prates about.

Senator McGRATH. Why do you not read the whole sentence?

Mr. PEREZ. Because that is the crux and guts of it.

Senator McGRATH. No; it is not.

Mr. PEREZ (reading):

> It is the purpose of government in a democracy to regulate the activity of each man in the interest of all men. It follows that every mature and responsible person must be able to enjoy full citizenship and have an equal voice in his government.

That is the hypocritical conclusion attached to the statement that it is the purpose of government in a democracy to regulate the activity of each man in the interest of all men; and then what follows, I say, is mere hypocrisy because there is attached to it the string of Federal gestapo policing of the activity and the civil rights of every man, woman, and child in this country. That is why I say it is a hypocritical conclusion following the crux, the crucial statement behind the whole works.

Is that the American way, the purpose of government in a democracy, to regulate the activity of each man? Do you not smell the atmosphere of the Kremlin?

Now the Attorney General makes a statement on page 6:

> Section 102 provides for a Commission on Civil Rights—

and he adds parenthetically—

> (no hearings or subpena powers are conferred). * * *

But I submit to you, Mr. Chairman and gentlemen of this committee, that under Senate 1728 the Commission is provided with such authority with a venegeance to subpena witnesses, to order the production of records anywhere in the United States or any of its Territories, to take a man out of New Orleans, La., and tell him to report in Honolulu before any agent of the Commission backed up by the Department of Justice's special section, by hordes of secret police, by every department of the Federal Government including the military, if need be, as was done in Reconstruction times under similar legislation.

Who with an American heart and conscience will subscribe to such a monstrosity?

Of course, this bill Senate 1728 would provide for lots more political jobs with the American people. Even those interested in practical politics are not ready to sacrifice liberty and freedom for a mess of political pottage.

Mr. Chairman, most of the provisions of this bill have been enacted by Congress before, as I said, in Reconstruction times following the War Between the States. In the act of 1870, in the act of 1875, it was attempted by Congress to police the civil rights of the people of the South particularly and with venegeance.

And the Supreme Court finally, in the civil-rights cases, held that those enactments were beyond the power of Congress, were matters reserved to the States and to the people by the tenth amendment, and were not matters within the power of the Federal Government under the provisions of either the fourteenth or the fifteenth amendments. The Court held positively and repeatedly that the restraints of the fourteenth amendment ran against the States and not against individuals and that it was within the power of the United States courts and of Congress to prevent the States from discriminating against any citizen and to gaurantee to all citizens equal protection of the laws. They held that the equality of the rights of the citizens is a principle of republicanism, and the duty of protecting its citizens in the enjoyment of this principle was originally assumed by the States; and it still remains there. Is it the purpose of this bill to take it away from the States and the people themselves and to put it in the Federal secret police?

The United States Supreme Court further definitely held that the rights and privileges under the fourteenth amendment are secured by way of prohibition under State laws and State proceedings which affect those rights but that, if prohibitions have no application to the wrongful act of an individual, unsupported by the exercise of State authority, such an act is only a private wrong or crime of that individual and may be vindicated in the State courts.

In that connection, I find that the Attorney General, Mr. Clark, criticizes the failure in one or two cases of State laws punishing alleged guilty parties for violating the civil rights of individuals; and the Attorney General seeks to draw the conclusion from that that the National Government ought to take over the policing of the States and the individual rights of the people of the States and the enforcement of the criminal laws of the States or, rather, ought to replace or supplant the criminal laws of the States.

As a matter of fact, this bill, Senate 1725, is most far-reaching and would destroy the republican form of government in every State in

this Union, and would submit every State official from the governor on down to constant harassment and persecution by the secret police and Civil Rights Section of the Department of Justice.

This bill would seek to make it a Federal right, subject to heavy penalties, guaranteeing what is already guaranteed by the laws of every State in the Union and by the bill of rights of every constitution in every State and of the United States; and that is the right to be immune from fines or sentences without due process of law, which, of course, necessitates a fair trial and is always subject to review by the courts of the land, including the United States Supreme Court. But this bill would make it a crime, this bill would make it impossible for any State authorities to enforce State criminal laws without the constant threat of being involved in some Federal politics or persecution through the Federal secret police or prosecuting attorneys because, if a person were prosecuted and convicted and someone in the Federal organization didn't like the prosecutor or the judge or the members of the jury under this bill, what would prevent them from having them indicted and prosecuted and persecuted and hounded by the Federal secret police, as is done behind the iron curtain in Russia and these other countries? What would become of the republican form of government of the State under such circumstances?

What is due process of law? A person is entitled to a fair trial and to all of the protections afforded by law. He is protected against testifying against himself or incriminating himself. He is protected against being placed in jeopardy more than once for the same crime. He is entitled to a trial by jury in all felony cases. But, after the State laws have been complied with, what would prevent the Federal secret police from stepping in, on the report of some subversive organizations, of which there apparently are many, of influence with the administration? I say the Attorney General seeks to make capital of that.

We who are engaged in State government would not imply, because the Federal Government has fallen short in the enforcement of some of the Federal laws, that the Federal authorities should surrender their rights to enforce the Federal laws to the State governments, and certainly there is ample room for criticism, or suspicion, at least. And I point to the report dated August 28, 1948, of the Committee on Un-American Activities, which broadly charges that the committee's investigation of espionage among Government workers has been hampered at every turn by the refusal of the executive branch of the Government to cooperate in any way with the investigation, due to the President's loyalty freeze order. That goes pretty high up in the National Government.

Then again, on page 11, the committee reports:

> The committee again calls upon the Attorney General of the United States to vigorously enforce the existing espionage and other laws against those who are participating in the Communist conspiracy.

But we say that, while there is room for improvement and while there is a will to improve the enforcement of Federal laws within the proper sphere of Federal Government activities, we, of State government, are leaving it to the Federal authorities. We are not trying to encroach upon the field of Federal Government.

And, Mr. Chairman, may I file this report of the Committee on Un-American Activities, particularly pages 10 and 11, in connection with my statement?

Senator McGRATH. You may file it; yes.
Mr. PEREZ. I will make it "Perez 1" to identify it.
Senator McGRATH. The committee will receive it for the file.
(The material referred to is as follows:)

PEREZ EXHIBIT No. 1

INTERIM REPORT ON HEARINGS REGARDING COMMUNIST ESPIONAGE IN THE UNITED STATES GOVERNMENT

INVESTIGATION OF UN-AMERICAN ACTIVITIES IN THE UNITED STATES

(Committee on Un-American Activities, House of Representatives, 80th Cong., 2d sess.) Public Law 601, (sec. 121, subsec. Q (2)). August 28, 1948)

It has been the established policy of the House Committee on Un-American Activites since its inception that in a great, virile, free republic like the United States, one of the most effective weapons against un-American activities is their continuous exposure to the spotlight of publicity. It has also been our consistent position that the people of the United States—to whom this Government rightfully belongs—are entitled to a clear picture of the extent of disloyal and inimical influences working secretly to destroy our free institutions whether they operate from within or without the Government.

The current investigations and hearings dealing with past and present Communist esplonage activities in Government are therefore strictly in conformity with what the members of the House Committee on Un-American Activities conceive to be their duty and responsibility to undertake.

It is essential to the success of our efficient Federal Bureau of Investigation that it must not disclose all of its sources of information and methods of operation. It is also a fact—although one which is sometimes overlooked by the ill-informed—that the FBI is a fact-finding and investigating agency and not an exposure agency. Its duties are to find and record the facts so they will be available to police officers, law-enforcement officials, and the prosecuting agencies of Government. It is not a vehicle for reporting to the public on the extent of nefarious activities. It is under the direction of the Attorney General of the United States, and its contacts wth the public and with Congress are determined by policies established by him.

In the United States we sometimes utilize the method of gathering and presenting evidence which is represented by the grand jury. Grand-jury proceedings are conducted in the greatest of secrecy. Jurors in these proceedings sit as judges of the evidence submitted, but their decisions as to guilt or to innocence are made only after the officials conducting the proceedings ask them for a verdict as to specific points and on specific questions. In the case of a Federal grand jury, it therefore rests with the Attorney General as to what verdicts are sought, as to what evidence is submitted, and as to what disposition is to be made of the material presented. Until a grand jury has issued either an indictment or a no-true bill, there is no means of establishing either the guilt or the innocence of the people before it on the basis of what goes on behind its tightly closed doors. At best, the grand jury is not a vehicle for reporting to the public on the extent of un-American activities in a free republic.

As contrasted with the FBI and the grand jury, the House Committee on Un-American activities has a separate and a very special responsibility. It functions to permit the greatest court in the world—the court of American public opinion—to have an undirected, uncensored, and unprejudiced opportunity to render a continuing verdict on all of its public officials and to evaluate the merit of many in private life who either openly associate and assist disloyal groups or covertly operate as members or fellow travelers of such organizations. It is as necessary to the success of this committee that it reveal its findings to the public as it is to the success of the FBI that it conceal its operations from the public view.

The functioning of the Communist esplonage rings in Government provides a dramatically vivid illustration of the functions of the three foregoing public institutions in their rendering of the service they are created to perform.

The FBI function to find and assimilate all of the facts available to that organization and to make them available to the prosecuting agencies of the Federal Government. The Federal grand jury function to consider the evidence

selected from these facts by the Attorney General and to pass judgment upon whatever verdicts it is asked to make by the Attorney General. The House Committee on Un-American Activities functions to alert the public concerning the existence and operation of these espionage practices, and to point up and propose the necessary new legislation to provide our country with greater safeguards and to enable it to protect itself against the constantly changing tactics and practices of world-wide and world-dominated communism and its American ramparts.

We are an arm of the lawmaking branch of our Government. It is our job to explore, to study, and to investigate, and to determine if new laws are needed or present laws need strengthening. In pursuing this all-important function, full inquiry is essential, which is the historic and special prerogative of the legislative branch of our Government. The duties and functions of the Committee on Un-American Activities are somewhat unique among the committees of Congress, which are principally concerned with matters of commerce, taxes, and the operation of the Federal Government, but there is delegated to us the function of investigating subversive influences which seek to destroy the Government and institution of the United States.

In dealing with groups and individuals that engage in this subversive conspiracy, the committee has the difficult task of pursuing its inquiry through regulations and procedures which, when formulated, were meant to apply only to law-abiding citizens of the country.

It is noteworthy, for example, that not until the House Committee on Un-American Activities began its current hearings on the subject did the general public have any knowledge that the now established and disclosed Communist espionage activities had reached into vital positions of high authority in Government. Not until these hearings began did the general public or even the average Member of Congress have the evidence upon which to base decisions concerning the new legislation essential to our national security under prevailing conditions. Not until these hearings began did the people to whom this Government belongs have any direct evidence as to the men and methods being employed to subjugate our freedom to the tyranny of a foreign totalitarian power. The false security of complacent ignorance is much worse than having either no security or no complacency at all.

It is also true that in many instances the crimes of treason and espionage are so difficult to punish by conviction because of technical devices and the necessity of so tightly defining these crimes; that if near-treason and "virtual espionage" and "cold-war treason or espionage" are to be safeguarded against, it is imperative that not only must the power of public opinion be marshaled against these disloyal and self-serving practices but legislation must be enacted which will provide appropriate punishment for these specific derelictions. To do less than that is to deny to the people generally the protection and security they have a right to expect from alert public officials.

REASONS FOR PUBLIC HEARINGS

Questions are sometimes raised both by chronic critics of this committee and by sincere observers as to whether holding public hearings on questions of loyalty, espionage, and Communist conspiracy ever serves the public interest. These people hold that our committee should screen witnesses carefully in secret executive sessions and sift the testimony, releasing to the public only such portions as the committee decides it should see or hear.

It is argued by those adhering to this position that this committee, in its zeal to protect the reputations and feelings of innocent people whose names may occasionally be injected into public hearings, should operate in large part after the manner of a grand jury and in utmost secrecy, withholding from the public the steps by which evidence is accumulated and its decisions made. This committee yields to nobody in its earnest desire to protect the innocent and to expose the guilty.

It is the established policy of this committee to protect in every feasible manner the reputations and the sensibilities of innocent citizens. It is also an established fact that in conducting public hearings—and this committee deplores the use of star-chamber, secret sessions unless public necessity requires them—an occasional mention of some innocent citizen in connection with a nefarious practice will inevitably occur. When it does we provide every opportunity for those mentioned to clear themselves of all suspicion in the same forum before the same publicity media as in the case of the original allegations. In addition, we

have frequently inserted memoranda in our files to protect those innocently accused elsewhere from unjust attack or suspicion.

At times, however, your committee is confronted with the necessity of running the risk that a few innocent people may be temporarily embarrassed or the risk that 140,000,000 innocent Americans may be permanently enslaved. When necessary to resolve the relative merits of two such risks as that, your committee holds to the position that its primary responsibility is to that great bulk of our American population whose patriotic devotion to our free institutions deserves the greatest diligence in being protected against those who would utilize our Bill of Rights and our American freedoms to destroy permanently these great safeguards of personal liberty and human dignity.

There is another very vital and important reason why public hearings such as are held by this committee provide an indispensable supplement to the off-the-record investigations and activities of such institutions as the FBI and the grand jury. It is illustrated most recently by the controversial features of the Chambers-Hiss testimony. Despite the fact that Alger Hiss had been interrogated as to his connections with communism and Communists by at least two outstanding Americans, Secretary of State Byrnes and John Foster Dulles, acting independently, and by other Government officials, none of these interrogatories had established the relationship of Hiss and Chambers until our committee held its public hearings on this case. In fact, it was not until our public hearings had proceeded for some time that it was definitely established that Alger Hiss and Whittaker Chambers knew each other personally and rather intimately during the precise period of time that Whittaker Chambers testified that their associations took place. Mr. Hiss testified that he knew Whittaker Chambers by the name of "George Crosley," but he positively identified the man known today as Whittaker Chambers as the man he knew. He testified unequivocally that he not only knew Chambers (by name of Crosley) but that he let him use his apartment without ever receiving payment for it, that he loaned Chambers money, that he loaned or gave him an automobile, and that he had even kept Mr. and Mrs. Chambers and their baby in his own home overnight on one or more occasions. Thus, the connection between Alger Hiss and Whittaker Chambers, as a man-to-man relationship, stands without challenge confirmed by the testimony of both men and the public hearings held by this committee. This fact had never been established by other investigations.

It should also be noted that the stark fact that Alger Hiss and Whittaker Chambers, a self-confessed paid Communist functionary and espionage agent, were acquainted with each other and did have numerous transactions and associations together, is of far greater significance under the circumstances than whether Chambers was known to Hiss by the name of "Carl" or of "George Crosley." This fact has been established without challenge for the record by the public hearings of this committee, although through the years it had been established by no other investigation.

Hiss will be given every opportunity to reconcile the conflicting portions of his testimony, but the confrontation of the two men and the attendant testimony from both witnesses has definitely shifted the burden of proof from Chambers to Hiss, in the opinion of this committee. Up to now, the verifiable portions of Chambers' testimony have stood up strongly; the verifiable portions of the Hiss testimony have been badly shaken and are primarily refuted by the testimony of Hiss versus Hiss, as the complete text of the printed hearings will reveal.

IDENTIFICATION OF THE ESPIONAGE GROUPS

Elizabeth T. Bentley, in testimony before the committee, identified two Communist espionage groups composed of Government employees and Government officials in Washington, D. C. Information supplied from the files of the Federal Government by members of these espionage groups was conveyed to New York City and turned over to agents of the Soviet Union, according to Miss Bentley. The members of these groups, as identified by Miss Bentley, and their employing Federal agencies for the period concerned in the testimony, are as follows:

Silvermaster group

Nathan Gregory Silvermaster, Director of Labor Division, Farm Security Administration; detailed at one time to Board of Economic Warfare.
Solomon Adler, Treasury Department; agent in China.
Norman Bursler, Department of Justice.

Frank Coe, Assistant Director, Division of Monetary Research, Treasury; special assistant to United States Ambassador in London; assistant to the Executive Director, Board of Economic Warfare and successor agencies; Assistant Administrator, Foreign Economic Administration.
Lauchlin Currie, administrative assistant to the President; Deputy Administrator of Foreign Economic Administration.
Bela Gold (known to Miss Bentley as William Gold), assistant head of Division of Program Surveys, Bureau of Agricultural Economics, Agriculture Department; Senate Subcommittee on War Mobilization; Office of Economic Programs in Foreign Economic Administration.
Mrs. Bela (Sonia) Gold, research assistant, House Select Committee on Interstate Migration; labor-market analyst, Bureau of Employment Security; Division of Monetary Research, Treasury.
Abraham George Silverman, Director, Bureau of Research and Information Services, United States Railroad Retirement Board; economic adviser and chief of analysis and plans, Assistant Chief of Air Staff, Matériel and Services, Air Forces.
William Taylor, Treasury Department.
William Ludwig Ullmann, Division of Monetary Research, Treasury; Matériel and Service Division, Air Corps Headquarters, Pentagon.

Perlo group

Victor Perlo, head of branch in Research Section, Office of Price Administration; War Production Board; Monetary Research, Treasury.
Edward J. Fitzgerald, War Production Board.
Harold Glasser, Treasury Department; loaned to Government of Ecuador; loaned to War Production Board; adviser on North African Affairs Committee in Algiers, North Africa.
Charles Kramer (Krevitsky), National Labor Relations Board; Office of Price Administration; economist with Senate Subcommittee on War Mobilization.
Solomon Leshinsky, United Nations Relief and Rehabilitation Administration.
Harry Magdoff, Statistical Division of War Production Board and Office of Emergency Management; Bureau of Research and Statistics, WPB; Tools Division, WPB; Bureau of Foreign and Domestic Commerce.
Allan Rosenberg, Foreign Economic Administration.
Donald Niven Wheeler, Office of Strategic Services.

Miss Bentley also testified that Irving Kaplan, an employee of the War Production Board at the time, was associated with both groups, paying dues to the Perlo group and submitting information to the Silvermaster group. She identified the late Harry Dexter White, then Assistant Secretary of the Treasury, as another individual who cooperated with the Silvermaster group.

Unattached individuals

Miss Bentley further testified that there were certain individuals employed in the Government who cooperated in obtaining information from the files of the Government for the use of Russian agents, but who were not actually attached to either the Silvermaster or Perlo groups. These individuals, as named by Miss Bentley, and the governmental agency with which they were employed during the period concerned in the testimony, are as follows:

Michael Greenberg, Board of Economic Warfare; Foreign Economic Administration; specialist on China.
Joseph Gregg, Coordinator of Inter-American Affairs, assistant in Research Division.
Maurice Halperin, Office of Strategic Services; head of Latin-American Division in the Research and Analysis Branch; head of Latin-American research and analysis, State Department.
J. Julius Joseph, Office of Strategic Services, Japanese Division.
Duncan Chaplin Lee, Office of Strategic Services, legal adviser to Gen. William J. Donovan.
Robert T. Miller, head of political research, Coordinator of Inter-American Affairs; member, Information Service Committee, Near Eastern Affairs, State Department; Assistant Chief, Division of Research and Publications, State Department.
William Z. Park, Coordinator of Inter-American Affairs.
Bernard Redmont, Coordinator of Inter-American Affairs.
Helen Tenney, Office of Strategic Services, Spanish Division.

William Remington, of the Department of Commerce, was mentioned by Miss Bentley before the Senate investigation committee as having been associated with this group.

Ware-Abt-Witt group

On August 3 the committee heard the testimony of Whittaker Chambers. He testified regarding an underground apparatus which was set up by the Communist Party in the early thirties for the purpose of infiltrating the Federal Government. The members of this group, according to Mr. Chambers, and their governmental employment during the period concerned in the testimony, are as follows:

Harold Ware (deceased), Department of Agriculture.
John J. Abt, Department of Agriculture; Works Progress Administration; Senate Committee on Education and Labor; Justice Department.
Nathan Witt, Department of Agriculture; National Labor Relations Board.
Lee Pressman, Department of Agriculture; Works Progress Administration.
Alger Hiss, Department of Agriculture; Special Senate Committee Investigating the Munitions Industry; Justice Department; State Department.
Donald Hiss, State Department; Labor Department.
Henry H. Collins, National Recovery Administration; Department of Agriculture.
Charles Kramer (Krevitsky), National Labor Relations Board; Office of Price Administration; Senate Subcommittee on War Mobilization.
Victor Perlo, Office of Price Administration; War Production Board; Treasury Department.

SUMMARY OF WITNESSES AND TESTIMONY

Testimony regarding Communist espionage activities within the Government involving approximately 40 individuals was given before the committee by Elizabeth Terrill Bentley, Whittaker Chambers, and Louis F. Budenz, admitted former functionaries of the Communist Party.

Mr. Chambers was formerly editor of the (Communist) Daily Worker and of the New Masses. He is now a senior editor of Time magazine. Mr. Budenz was formerly managing editor of the (Communist) Daily Worker. He is now a professor at Fordham University.

Miss Bentley, according to her own testimony, which has been verified by Mr. Budenz, was formerly active in Communist underground activity. The committee is in possession of supporting evidence to establish these previous Communist affiliations.

Of these forty-odd individuals named, Lauchlin Currie, Harry D. White (deceased), Bela Gold, Sonia Gold, Frank Coe, Alger Hiss, Donald Hiss appeared before the committee at their own request and categorically denied the accusations made by Miss Bentley and Mr. Chambers.

Henry H. Collins, Victor Perlo, Abraham George Silverman, William Ludwig Ullmann, Nathan Gregory Silvermaster, John Abt, Lee Pressman, Nathan Witt, Duncan Chaplin Lee, Robert T. Miller, and Charles Kramer appeared in response to subpenas. Alexander Koral, who was allegedly involved in these activities, was also subpenaed. J. Peters, alleged head of the Communist underground in this country, will be served with a subpena on August 30.

Norman Bursler, Allan Rosenberg, Solomon Adler, Solomon Leshinsky, Mary Price, Donald Niven Wheeler, Edward J. Fitzgerald, Harold Glasser, Joseph Gregg, Rose Gregg, Irving Kaplan, and certain Russian contacts known only as Frank, Al, and Jack, have not appeared before the committee. Harold M. Ware is deceased, as is also Jacob N. Golos.

Ten witnesses (Alexander Koral, Henry H. Collins, Victor Perlo, Abraham George Silverman, Nathan Gregory Silvermaster, William Ludwig Ullmann, John Abt, Lee Pressman, Nathan Witt, and Charles Kramer) refused to affirm or deny membership in the Communist Party on the ground of self-incrimination. These 10 witnesses on the same grounds, also refused to affirm or deny contacts with 1 or more of the 40 individuals allegedly involved in espionage or with Elizabeth Terrill Bentley or Whittaker Chambers.

Nine of these witnesses (Alexander Koral, Victor Perlo, Abraham George Silverman, Nathan Gregory Silvermaster, William Ludwig Ullmann, John Abt, Lee Pressman, Nathan Witt, and Charles Kramer) refused to affirm or deny charges made against them by Elizabeth Terrill Bentley or Whitaker Chambers.

No charge of Communist Party affiliation was made against either Lauchlin Currie or Harry Dexter White. Both denied such affiliation. However, both admitted acquaintance with various members of the espionage group named by Elizabeth Bentley and Whitaker Chambers.

The following persons who were charged with being Communist Party members denied such affiliation: Bela Gold, Sonia Gold, Duncan Chaplin Lee, Alger Hiss, Donald Hiss, Robert T. Miller, and Frank Coe. They all admitted, however, associations and acquaintance with various members of the espionage groups named. Alger Hiss, after previous denials, admitted knowing Whittaker Chambers as George Crosley. Duncan Chaplin, Lee and Robert T. Miller admitted knowing Miss Bentley, the former acknowledging also acquaintance with Jacob Golos, Miss Bentley's superior, now deceased.

WHY THESE HEARINGS WERE DEFERRED UNTIL JULY

The committee would like to make it emphatically clear why we undertook public hearings on espionage activities within the Government at this time. In February of 1947, the committee's investigations determined that certain Government employees had engaged in espionage activities. We knew that certain divisions of the Government were under rigid surveillance by the FBI. The committee later became aware of the fact that a secret blue ribbon grand jury had been convened in New York City to consider this Government espionage. In deference to the functions of the grand jury, and of the investigative and prosecuting agencies of the executive branch of the Government, the committee took no action or pursued no investigation which would in anywise jeopardize or interfere with the prosecution of the persons involved. Several hearings which the committee had scheduled and was prepared to hold were postponed because of the grand jury's investigation.

In July of 1948, however, when the grand jury recessed after sitting for 14 months without returning any indictments, or issuing a no true bill, or making any other disposition concerning the persons involved in this espionage activity, the committee felt compelled to bring to the attention of the American people the information that it had before it.

When we called Elizabeth T. Bentley before our committee on July 31, we were fully aware that her information and allegations had been thoroughly checked by the FBI, and that they had been substantiated. When the committee called before it Whittaker Chambers we knew that he had advised a high official of the Government as early as 1939, of the information that he knew through first-hand knowledge of the operations of the Communist apparatus within the Government during the period 1934 through 1937. Because of the fact that the Government files are not available to the committee, we could not determine what official action had been taken on the allegations of Chambers. We were in possession of no information that his story had ever been disproved or discredited. We thought his testimony should be brought out to show that this Communist penetration in the Government began as early as 1934, and that is culminated in the actual operation of the espionage rings as described by Miss Bentley.

HISS-CHAMBERS TESTIMONY

One of the most difficult problems which has faced the committee has been that of resolving the conflict between the testimony submitted by Whittaker Chambers and Alger Hiss. Chambers testified on August 3 that Hiss was a member of a Communist underground group of Government workers during the period 1934–37 when Chambers was serving as a Communist Party functionary in Washington. On August 5 Hiss categorically denied the charges of Chambers that he was or ever had been a member of the Communist Party, and furthermore denied ever having known Chambers or "having laid eyes upon him." As a result of exhaustive investigation by the committee's staff and of hours of executive session testimony from Hiss, Chambers, and all others who had any information concerning the conflicting stories, Hiss finally admitted on August 17 for the first time that he actually had known Chambers as George Crosley, during the period in question.

As a result of the hearings and investigations which have been conducted by the committee to date, these facts have been clearly established: (1) There is no doubt whatever but that Chambers from 1931 to 1938 was a paid functionary of the Communist Party and that from 1934 to 1937 he operated as a member of the Communist underground among Government workers in Washington. (2) The refusal of Nathan Witt, John Abt, Henry Collins, Lee Pressman, and Victor Perlo to answer any questions concerning their activities as members of this group on the ground of self-incrimination and to answer as to whether or not they were members of the Communist Party during that period is in itself

strong corroborative evidence for Chambers' story. (3) By his own admission Hiss knew Chambers for a period of at least 10 months during the period in question and possibly longer. It is also clear that Hiss knew Chambers very well as indicated by his admission that he sublet his furnished apartment to him, that he met him on various occasions for lunch, that on at least one occasion he gave him a ride to New York from Washington, that for several days the Chambers family visited in the Hiss home and that he loaned money to Chambers, and that he gave him an automobile. (4) While admitting that he knew Chambers, Hiss still denies that he knew that Chambers was a Communist, and that he, Hiss, was a member of the Communist Party at any time.

Hiss testified on August 16 and 17 that at the time that he leased his apartment to Chambers he gave him a 1929 Ford automobile. In his testimony in the public session on August 25, however, when confronted with documentary evidence which committee investigators produced, that he actually had transferred the car in 1936 to the Cherner Motor Co. who the same day transferred it to one William Rosen, Hiss changed his position on the car and testified in a manner which to the committee seemed vague and evasive. He stated that he could not recall whether or not he gave the car to Chambers or whether he loaned it to him. He could not recall whether he gave it to him at the same time he sublet the apartment to him or whether he did so several months later after Chambers had left the apartment. He had no recollection whatever of having transferred the car to the Cherner Motor Co., although he admitted that the signature on the transfer of title was his own. He said that it was possible that he could have given the car to Chambers and that Chambers could have given it back to him, and that he later could have transferred it to the Cherner Motor Co. but that he could not recall what happened.

This much concerning the testimony in regard to the car can definitely be concluded. Hiss stated on August 16 and 17 that he sold or gave the car to Crosley (Chambers) at the same time that he sublet the apartment to him, and that at the time that he did this he had another car which he himself was using. A check of the records by the committee staff showed that Hiss did not acquire another car until several months after the apartment transaction was concluded and that he actually transferred the car over a year later to the Cherner Motor Co.

His vague and evasive testimony on this transaction raises a doubt as to other portions of his testimony. In this connection it should be observed that on 198 occasions Hiss qualified his answers to questions by the phrase "to the best of my recollection" and similar qualifying phrases, while Chambers on, the other hand, was for the most part forthright and emphatic in his answers to questions.

For example, Chambers testified on August 7 that Hiss had expressed a desire to transfer the automobile in question to a Communist Party worker and that he effected this transfer by taking the car to a used-car lot which was operated by a Communist sympathizer, who in turn was to turn it over to a Communist organizer. To date the committee's investigations of the car transaction tend to bear out Mr. Chambers' version of what happened rather than Hiss' version. The only evidence of the transfer of the car is of the transfer to the Cherner Motor Co. in 1936 and to William Rosen to whom the car was transferred by Cherner. When questioned by the committee, Rosen refused to answer any questions concerning the car or concerning whether he was a member of the Communist Party on the ground of self-incrimination. The committee will continue to pursue its investigations of this transaction.

In summary, the developments of the Hiss-Chambers controversy to date warrant the following conclusions:

1. Despite his denial that he has ever been a member of the Communist Party or had any friends who were Communists, Hiss has admitted knowing and associating with Harold Ware, Nathan Witt, John Abt, Henry Collins, Lee Pressman, and Whittaker Chambers, all of whom are either known or admitted members of the Communist Party, or who have refused to answer the question as to whether they were members of the Communist Party on the ground of self-incrimination. It stretches the credulity of the committee to believe that Hiss could have known these people, including Chambers, as well as he did without at some time suspecting that they were members of the Communist Party.

2. The committee believes that Mr. Hiss was not completely forthright in his testimony before the committee on August 5 when he failed to tell the committee that he noted a familiarity about the features of Whittaker Chambers when a picture of Chambers was shown to him. He has since admitted that

he told several friends before the hearing of his noting this familiarity but when shown a picture of Chambers he deliberately created the impression that the face meant nothing to him whatever. It is hard to believe that Hiss could have known Chambers as well as he admits he knew Crosley without being able to recognize the picture which was shown him during the hearing of August 5.

3. Hiss has either failed or refused to tell the committee the whole truth concerning the disposition of his 1929 Ford automobile. It is inconceivable that a man would not remember whether he had given a car away twice or at all and it is just as inconceivable that he would not recall whether a person to whom he had given the automobile had later returned it to him.

4. Despite the fact that Hiss says he knew Chambers under the name of Crosley, a thorough investigation by the committee has failed to date to find any person who know him by that name during the period in question. The committee believes that the burden is upon Hiss to establish that Chambers actually went under the name of Crosley at the time he knew him and that Hiss knew Crosley as a free-lance writer rather than as the admitted Communist functionary which Chambers actually was during that period.

OBSTRUCTIVE TACTICS BY WHITE HOUSE

The committee's investigation of espionage among Government workers has been hampered at every turn by the refusal of the executive branch of the Government to cooperate in any way with the investigation due to the President's loyalty freeze order. Not only have the executive agencies refused to turn over to the committee the loyalty files of the suspected members of the spy rings but they have even gone so far as to refuse to turn over the employment records of these individuals. The committee can see no excuse whatever for such arbitrary action since it is obvious that turning over employment records would in nowise involve disclosing sources of information or confidential data. Had the executive agencies of the Government cooperated with the committee in its investigation, there is no question but what the public would now have full information concerning all the ramifications of the espionage rings. The committee has proceeded to obtain this information in every way possible and eventually will see that it is presented to the public, but the committee deplores the fact that the executive branch of the Government will in no way aid the committee in its efforts to protect the national security from those who are doing everything they can to undermine and destroy it.

RESPONSIBILITY OF ATTORNEY GENERAL

The committee again calls upon the Attorney General of the United States to vigorously enforce the existing espionage and other laws against those who are participating in the Communist conspiracy. These laws should be enforced without regard to partisan or political considerations because the very security of the Nation is at stake. The failure of the Attorney General to enforce the laws as vigorously as he should has been in large part responsible for the growth and power of the Communist conspiracy in the United States.

The committee again calls upon the Attorney General to forward to the Congress at the earliest possible date recommendations for strengthening the espionage laws so that they will be adequate to deal with the Communist conspiracy. As long ago as February 5, the Attorney General appeared before the Legislative Subcommittee of the Un-American Activities Committee and declared that amendments to the espionage laws were essential in order to meet the new techniques which had been developed by the Communists and other foreign agents. He assured the committee that his recommendations would be forwarded to the Congress at an early date. Members of this committee have repeatedly requested the Attorney General since that time to give the Congress his recommendations for needed changes of the espionage laws and as yet have received no response whatever as to what changes are needed.

The Attorney General has from time to time inferred that those who participated in the Bentley spy ring might be immune from prosecution under present laws because of the inadequacy of those laws. This investigation has shown clearly that a well-organized and dangerous espionage ring operated in the Government during the war; and if present laws are inadequate, as the Attorney General has inferred, to prosecute the members of this ring, it is the solemn responsibility of the Attorney General to forward to the Congress immediately his recommendations for needed changes in the espionage laws so that the national security can be protected.

It is also imperative that the Attorney General proceed promptly to call the New York special grand jury back into session to consider his recommendations on the disposition of the evidence he has placed before it. The public has the clear right to have this proceeding concluded by indictments where indicated, by a no true bill where warranted, and by a full report by the Attorney General on his disposition of the case.

THE COMMUNIST UNDERGROUND APPARATUS

In the past the committee has dealt primarily with the open manifestations and activity of the Communist Party. From time to time, however, witnesses have called our attention to the existence of a far-reaching and ramified underground organization. The Communist Party has been compared with a submarine with its small periscope exposed and its destructive apparatus beneath the surface.

The testimony of Elizabeth Terrill Bentley and Whittaker Chambers has disclosed the existence of compact, conspiratorial rings consisting of Communists within the Government. These rings maintained their contact with the Communist Party through one designated person known to them only by a pseudonym. This person in turn contacted the representative of the Soviet military intelligence. Through this single contact the members of each ring paid their party dues, received literature and instruction, and transmitted documents and information. There is every reason to believe that the committee has merely scratched the service of these activities, that more of these groups exist than have been disclosed by available witnesses, and that such groups are still operating within the Government.

This condition provides a factual answer to those who raise the fear that appropriate legislation may drive the Communist Party underground. The party is in fact and by its own choice already in large measure underground.

HOW COMMUNIST CONSPIRATORIAL TACTICS CHANGE

Throughout the world and throughout all time a prime facet of Communist conspiracies has been the utilization of every device and protection the law of the land provides to escape detection, to avoid punishment, and to utilize the safeguards provided to protect the innocent to establish their godless tyranny to provide a dictatorship for all but the favored few.

This committee has witnessed the constantly changing practice of these devices of deceit and this misuse of constitutional safeguards by American Communists since its first inception.

First, Communists sought to defy the subpena power of the Federal Government as exercised by the regularly constituted committee of the Congress. Then they resorted to slander, abusive invective, and diabolic mistruths about the Congress as a whole and the members of congressional investigating committees in particular. They defied the right and the power of Congress to investigate their conspiratorial activities, seeking to protect themselves by untruthfully describing themselves as a "political party."

For a time they refused to answer all pertinent questions before congressional committees. This committee continued to try to change its tactics and improve its techniques to cope with the chameleonlike tactics of these Communist conspirators. Finally, in the Josephson case the Supreme Court upheld the right of a congressional committee to cite for contempt a recalcitrant or contemptuous witness. A long series of convictions and jail sentences has now resulted as a consequence of cases cited for contempt by Congress.

Confronted with this situation, the Communist legal cell in America has lately developed yet a new tactic. They now counsel their Communists clients to fall back upon the fifth amendment and to resort to the statement, "I cannot answer the question on the grounds of self-incrimination," when any question is asked whereupon a forthright reply might expose their guilt or complicity. Utilization of the grounds of self-incrimination carried to the extreme and unreasonable extent now recommended by Communist counselors could conceivably develop to the point where all legislative investigation processes would be stymied completely and the Communists could cloak their conspiratorial and treasonable activities in and out of Government by this device. This committee is now studying methods of legally meeting this new challenge to constitutional authority as it has studied past devices developed and utilized by Communists for similar purposes. It urges the cooperation and assistance of the best legal counsel in America to aid it in arriving at a proper course of action

in the interests of our national security in this uncertain and insecure juncture in our Nation's history.

The committee recognizes and desires to protect the constitutional right to use the fifth amendment, but the Communist Party has now resorted to the extreme of invoking this constitutional right as a cover-all for any and all activities whether possible incrimination may or may not be involved. They have employed it as a device for refusing to provide the committee with any pertinent information concerning Communist activities in America.

PRESENT OBSERVATIONS AND FINDINGS

This committee will issue a final report on the Communist espionage hearings just as soon as it appears that all evidence has been gathered, verified, and evaluated. In the meantime, this interim report is being issued to acquaint the public with the salient features of what has transpired to date. For that reason, too, the complete transcripts of all hearings to date are now in the hands of the Government Printing Office and will be available to the public at an early date.

We are not attempting in this report to preview the final findings which this committee will make, since every day brings in new facts which we must explore and exhaust. It is our purpose to ferret out and expose every available fact in connection with the entire espionage conspiracy which the Communists have established and operated in our executive agencies. Until that is done, other interim reports may be issued. The final report will not be delayed a day beyond that necessary to complete the vast amount of investigation, interrogation, and exploration which lies ahead of us and the staff investigators and subcommittees which will move forward diligently on this vital matter.

As of this date, however, it is possible to record certain findings and observations which we believe will be helpful in aiding the public and the Members of Congress generally to understand the significance of what is being uncovered by these hearings.

(1) It is now definitely established that during the late war and since then, there have been numerous Communist espionage rings at work in our executive agencies which have worked with and through the American Communist Party and its agents to relay to Russia vital information essential to our national defense and security. Russian Communists have worked hand in hand with American Communists in these espionage activities.

(2) It is established beyond doubt that there is grave need for vigorous, persistent, and courageous continued investigation to determine the identity of those guilty of past offenses, the methods employed in the past and at present to move carefully selected Communist agents and their sympathizers into key positions of Government, and to break up all Communist espionage conspiracies and activities prevailing at this time. These situations should command and receive the most diligent attention of this committee, of the Attorney General's office and the grand jury proceedings under his authority, and of the Federal Bureau of Investigation. They should proceed without partisanship and without prejudice. It would be greatly in the public interest if they could receive the support of the White House rather than to be obstructed by it. This committee believes the eradication of espionage from the Federal Government should command the same cooperation between the White House and the Congress and between the two major American political parties as has been utilized in the formation and implementation of our bipartisan foreign policy.

(3) As evidence of this committee's sincerity in desiring to cooperate fully with the executive agencies in the ferreting out of all disloyal and un-American practices in Government during our committee's existence, we have opened our files to the security officers and loyalty board representatives of the executive departments. This year alone these representatives of the executive departments have paid over 14,000 official visits to our file rooms. They have been accorded full cooperation. Contrariwise, under the President's Executive order, the files and records of the executive departments on all matters of loyalty and security have been firmly closed, not only to our committee but to all committees of Congress and to the general public. We hold that this is an unwholesome, an unwise, and an unsafe situation.

(4) Since the committee has not completed its investigation, it is not prepared at this time to forward to the Attorney General specific charges of perjury. However, we have made available to the United States Attorney a complete transcript of the hearing in this case and shall continue to keep him supplied

with the full text. The committee is not a prosecuting body; that responsibility rests with the Department of Justice and not this committee.

(5) Investigations and hearings thus far completed offer convincing and compelling reasons why new legislation is necessary to safeguard this free Republic against the new and clever conspiratorial tactics developed by Communists to promote and control their espionage activities and their disloyal purposes.

Among the dangers which must be met by new legislation are at least the following on the basis of existing evidence; continuing investigations may develop the need for yet additional legislative action--

(A) Communists must be required by law to register so that the present underground activities of the party will be subject to at least this additional weapon of exposure and detection. This was a feature of H. R. 5852, approved by this committee this year and overwhelmingly passed by the House on May 19.

(B) Communists should be denied by law the privilege of employment by the Federal Government, with adequate penalties on both those seeking employment as Communists and those knowingly giving appointive positions to Communists. This also was a feature of H. R. 5852.

(C) Passports should be denied American Communists who utilize these passports to further their conspiratorial plots against our American freedoms as they confer with their coconspirators abroad. This, too, was a feature of H. R. 5852.

(D) Legislation should be adopted making it more difficult for unlimited numbers of foreign Communists to ented the United States and making it easier for this Government to deport or imprison Communist emissaries who utilize their entrance into the United States to attack or undermine our American institutions.

(E) The espionage laws of the United States should be amended or tightened so as to provide appropriate penalties for Government officials who, without authority, relay secret and significant information affecting our national security to the representatives of any foreign power, friend or enemy, peacetime or war.

(F) Legislation should be adopted making it impossible for the executive branch of the Government to deny to the legislative branch of the Government necessary information dealing with the loyalty of employees of the Federal Government.

(G) All of the provisions of H. R. 5852 should be adopted at the next session of Congress, with certain amendments herein suggested, together with other definitive language and provisions enabling it to cope with some aspects of Communist activities, evasions, and tactics which the current investigations and hearings are making apparent to all. Among these is the new Communist tactic of evading detection and impeding the processes of legislative investigation through an unwarranted and unjustifiable misuse of the protections which the fifth amendment to the Constitution rightfully provides for those unjustly accused or those decent, patriotic Americans who may at times find themselves required to defend themselves in a court of law.

(H) Legislation should be adopted by the next session of Congress which sharply increases the penalties for those convicted of contempt of Congress.

(I) During the course of these hearings our committee was shocked to have before it witnesses who hold Reserve commissions in our Armed Forces and who refused to answer under oath whether or not they were, are, or ever have been members of the Communist Party. It was equally shocking to have former high officials of the Federal Government take such a position. The committee therefore recommends that the armed services revoke the commission of any officer who refuses to answer this question. The Communist Party is now accepted in all quarters as not being a political party in fact but a conspiracy working for the overthrow of the Government of the United States. The committee further recommends that any official or employee of the Government who will refuse to state under oath whether or not he is a member of the Communist Party should be removed, and his name "flagged" against any future Government service.

Mr. PEREZ. This is only to offset, if you please, Mr. Chairman and gentlemen of the committee, the efforts made by the Attorney General's Office to take over, under his Department, the enforcement of criminal laws within the States, which, under the Constitution, do not come within the sphere of Federal governmental activities. He refers to the Screws case; one case, possibly two. And I simply refer to the official report of an official committee of Congress, after a thorough investigation, to offset the isolated instance cited by the Attorney

General to aggrandize under his Department the power of the enforcement of laws within the States.

Senator McGRATH. We will accept it for what it is worth.

Mr. PEREZ. Yes, sir.

The Attorney General also supports the provisions of this bill, S. 1725, with respect to the holding of State and district and local elections, which would authorize his Department and the secret Federal police to interfere with local elections, and which would give to the Federal Government all-embracing control of elections, as against State control, where it belongs, under the Constitution.

Mr. Chairman and gentlemen of the committee, seriously, can we treat the Constitution of the United States as a mere scrap of paper? I submit that we should not. Under one of the provisions of S. 1725, the Attorney General, again, through his Special Civil Rights Section, would be given the right to bring civil proceedings against any individual, any citizen, or any private concern, anywhere in the United States, for so-called preventive or declaratory or other relief. And in that way he could have his Department harass and interfere with the liberties and freedoms and rights of the American people, and business and labor as well. And when I say "people," I mean the people of all races and all religions, indiscriminately, throughout the whole of the United States.

Possibly the Attorney General would like to have a great deal more power. We think he has plenty to take care of as it is.

There is a provision in this bill which would specifically prohibit segregation on common carriers, accommodations for travelers generally.

We in the South feel that our people are provided with all equal accommodations and services. The railroad companies and the bus lines and the streetcar services are all in business under our private-enterprise system for profit, and they furnish to all of their customers and prospective customers every facility and convenience and comfort in order to secure that trade, without compulsion on the part of the Federal Government. That is one of the cases which the United States Supreme Court passed upon and held that Congress had no right to legislate on this subject matter.

Robinson—the case of Robinson and wife against the Memphis & Charleston Railroad Co. was an action brought in the Circuit Court of the United States for the Western District of Tennessee. And the act also provides not only for criminal penalties but for private penalties. That case was for the recovery of damages, and the gravamen was the refusal by the conductor of the railroad company to allow the wife to ride in the ladies' car for the reason, as stated in one of the counts, that she was a person of African descent. It was held that sections 1 and 2 of this civil rights statute were unconstitutional, and they gave lengthy reasons, particularly that "it is State action of a particular character that is prohibited" by the fourteenth amendment, and not an action of any private individual or business. This is a legislative power conferred upon Congress, and this is the whole of it, and it does not extend to regulating the personal activities of the citizens of this country.

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.

Those are the solemn findings of the Supreme Court of the United States, when they held similar legislation to be unconstitutional, as against the Constitution that we are now sworn to uphold in all of its provisions, and not attempt to destroy by indirection, subterfuge, or any other machination or conspiracy.

I want to state that, on page 31 and following, the Attorney General in his statement to this committee refers to the Bob-Lo case, the case of Bob-Lo Excursion Co. versus Michigan. But mind you, in that case, there was no Federal statute before the Supreme Court for interpretation. It was a State law only, the Michigan civil rights law. It was held that it applied to a steamboat carrier transporting passengers from Detroit to an island which is a part of Canada.

I want to point out that, while that case is thrown in by the Attorney General's statement, and he adds, "There is little doubt as to the direction of national policy referred to in the Bob-Lo case," yet there was no Federal enactment or statute at issue there, and the Court simply held a State law on the subject to be valid, the subject matter of which, of course, comes within the control and the regulation of the State government, set up by the people of that State. But I read to you the Memphis Railroad case, where the Supreme Court held a similar enactment by Congress to be unconstitutional, because it encroached upon the rights of the people through their State government, and was not included in the fourteenth amendment in any of the powers invested in Congress or the Federal Government. So certainly the Bob-Lo case is not a precedent which gives the Federal Government any power over the regulation of every man's activity.

The Attorney General winds up very significantly, on page 34 of his lengthy statement, which, as I previously said, did not cite any constitutional authority for this legislation, and he says, in his peroration: "It may be impossible to overcome prejudice by law, but many of the evil discriminatory practices which are the visible manifestations of prejudice can be brought to an end through proper Government controls."

What is the implication of that? "Through proper Government controls," following the statements in the bible of civil rights, the report to the President, means that it is the purpose of government in a democracy to regulate the activity of each man. And the Attorney General states in his prepared statement that the Civil Rights Section of his Department has not policed civil rights, because they didn't have the manpower to do it with. But he wants to implement it. So Mr. Clark wants to police the civil rights of us American people, regardless of the constitutional limitations, the prohibitions in the United States Constitution, which he himself is sworn to uphold.

Mr. Chairman and gentlemen of the committee, the proponents or supporters or advocators of S. 1725 or associated or kindred bills, as far as I know, as far as I have ever read or heard in the press or on the radio, have never stated their real purpose or motive, their incentive, what prompted them in the last few years, with more and more momentum, as they rode along the civil rights way. Where do they get this new idea of imposing upon the American people the policing of their civil rights, their liberties, and their freedom? I haven't been

able to find it, and I just wonder. But I can point to similar situations in other countries, decried in the policy preliminary statement in S. 1725 as totalitarian governments, for similar provisions in those totalitarian government's constitutional laws, which S. 1725 and similar legislation, proposed legislation, would emulate; or even imitate.

We know from the history of Russia, as meager as the history is, that, after the revolution was successful against the Czar of Russia, the first state in Russia to adopt this wonderful civil-rights program was Joe Stalin's Georgian state. And Joe Stalin himself was made the administrator of his so-called all-races law. And just as this proposed American version of the Joe Stalin all-races law would be impossible of compliance, so was Joe Stalin's Georgian law impossible of compliance. But it gave him absolute control, the iron hand of a dictator, over all the people of the Georgian state. And he built himself into such power, into such a powerful position, that he unseated Trotsky and he took over the reins of government, and he applied his civil-rights laws to the whole of Russia. And we know what a wonderful situation, what a Utopia, followed, just as would follow here again. We have read of the most terrible siege of persecution, slaughter, murder, extermination of the Russian people behind the Russian iron curtain. Joe Stalin's purges. And it didn't extend only to those of one one class or one race. It extended to the farmers, and it extended to the peasants, and it extended to all of those who didn't bow to the Russian Joe Stalin line; just as it could be made to apply here in this country.

I want to read to you from a copy of the official constitution—fundamental law—of the Union of Soviet Socialist Republics, the modern deviation, authority, and forerunner of S. 1725, and of the great blessings that would be bestowed upon the American people in the protection of their civil rights by a Federal gestapo instead of a Russian gestapo.

Article 123 of the Russian constitution reads as follows:

> Equality of rights of citizens of the U. S. S. R., irrespective of their nationality or race, in all spheres of economic, government, cultural, political, and other public activity is an indefeasible law.
>
> Any direct or indirect restriction of the rights of or, conversely, the establishment of any direct or indirect privileges for, citizens on account of their race or nationality, as well as any advocacy of racial or national exclusiveness or hatred and contempt, is punishable by law.

And I needn't look for and cite what "punishable by law" the Russian way, the Joe Stalin way, in Russia, means.

With your permission, may I file, in support of my statement, articles 123 and 124 of the authority for the modern civil-rights registration, the Russian Constitution?

Senator McGRATH. We will file that right beside a paragraph from our own Constitution guaranteeing these rights.

(The material referred to is as follows:)

> ARTICLE 123. Equality of rights of citizens of the U. S. S. R., irrespective of their nationality or race, in all spheres of economic, government, cultural, political, and other public activity is an indefeasible law.
>
> Any direct or indirect restriction of the rights of or, conversely, the establishment of any direct or indirect privileges for, citizens on account of their race or nationality, as well as any advocacy of racial or national exclusiveness or hatred and contempt, is punishable by law.
>
> ARTICLE 124. In order to insure to citizens freedom of conscience, the church in the U. S. S. R. is separated from the state, and the school from the church.

Freedom of religious worship and freedom of antireligious propaganda is recognized for all citizens.

Senator EASTLAND. Is that in now?

Senator MCGRATH. Yes; it is in.

Senator EASTLAND. What about the report?

Senator MCGRATH. That is in.

Mr. PEREZ. I don't know, Mr. Chairman, what section of our Constitution you are referring to, when you say that should be filed alongside of our Constitution, which guarantees those same rights, because there is no provision in our Constitution which gives to the Federal Government any power over the rights and liberties of the American people, which are reserved to the American people by the tenth amendment to the Federal Constitution and which are not granted to the National Government either by the fourteenth or fifteenth amendments. Because there is nothing in our Constitution which grants to the Federal Government any power to so legislate.

Senator MCGRATH. It grants these rights to the people. It reserves these rights to the people. And the people are not getting those rights.

Senator EASTLAND. How could it reserve the rights to the people? The reservoir of all rights is within the people, and they simply delegate, in certain fields, to the Federal Government.

Mr. PEREZ. The Federal Constitution came from the people through the State delegates in the convention which wrote the United States Constitution in 1787, and that Constitution was submitted to the people of the States in convention assembled by their own selected delegates, so the United States isn't giving the people anything.

Senator MCGRATH. Nobody said that it was. The United States Government is protecting the rights which the people have reserved unto themselves.

Mr. PEREZ. And certainly you would not contend, Mr. Chairman, that Senate 1725 proposes or intends to protect anybody's rights.

Senator MCGRATH. Well, that is a matter of opinion. I do think it protects the rights of the people.

Mr. PEREZ. And I quoted the Russian constitution to show as to that provision of the Russian constitution and the manner of its execution, the same as in the case of the provisions in this bill, the only manner in which it could be executed would be to destroy the liberties and freedom of the people. We have had a taste of FEPC and its regulations, and we know that under those regulations, the same as is aimed at here in all of this civil-rights legislation, it is the impossible millennium, the utopia, the same as was sought for hypocritically in Russia, that is pretended here; that all persons of different races and religious and national origins couldn't be discriminated against, so that if an employer or a labor union had 10,000 in their organization, then those of the different races and religions and national origins could each demand, under the national law, if it were a law, as it is in Russia, that they be treated indiscriminately in equal proportionate numbers, and so forth, which is impossible of compliance. And that is the trick, and that is the secret, of the viciousness of this proposed so-called civil-rights legislation.

How can any employer or labor union treat all peoples indiscriminately in the matter of race and religion and national origin, in numbers, in wages, in promotions? Let us say the population of New

Orleans is 500,000, and there are 33 percent of colored people and there are 49 percent Catholics and there are 21 percent of Baptists and Methodists, and another percentage of other religions and 5 percent Jews. How can any business organization or labor organization comply with a Federal gestapo requirement, the same as required under the Russian gestapo, to treat all people alike? I have at least five national origins, and there are a lot of other people, in the good old American way, whose people came from Spain and from France and from England and from Holland and from Italy. How are we going to level off and apportion those different national origins, being all entitled to the same promotion and the same everything else?

Senator McGRATH. How did it work during the war in your section?

Mr. PEREZ. I don't think it was attempted to be imposed, Mr. Chairman. Because it was attempted in other parts. I don't remember the name of the town. Was it the Philadelphia Transit Co. Everybody was getting along happily together and when the Board insisted on promoting some of different races and religions contrary to the wishes of the union, the labor organization, the employers, we know what happened. And we know how they disrupted that organization and how they hurt the war effort here and there. And I don't believe they insisted on it in our territory at all. But everybody got along happily, and everybody was more than happy not to have any interference from Washington in their daily lives and activities.

Senator EASTLAND. That program went along so well in the country that every State that voted on FEPC, 14 or 15 of them, overwhelmingly defeated it.

Mr. PEREZ. Yes, sir. My recollection is that it was defeated overwhelmingly in California, and it was defeated in the State of the great human-rights advocate of the Democratic National Convention, Senator Humphrey. I haven't heard him shout so much about human rights and about FEPC and all of that bunk lately. And any time you hear anybody talk about human rights, just the same as any time you hear anybody saying how honest he is, just watch him, brother. Because I can point to you that in the genocide convention, in the Declaration of Human Rights, in the International Bill of Human Rights, which is in its making now, there isn't a single provision which protects a man as to self-impeachment or testifying against himself, or against multitudinous trials, or autrefois acquit, or autrefois convict, or previous jeopardy. No, sir. And the right of representation by attorney, the right to be indicted by a jury of his peers or to be tried by a jury of his peers, in the selection of which he has a hand? No, sir. He can be shipped overseas to be tried before an international tribunal. Watch those fellows who shout "human rights." Look into their background, their associates, their associations. From the American way of life and Government standpoint, I submit they should be watched.

Senator EASTLAND. Judge, I submit that one of the elemental civil rights, and one of the elemental human rights, of an American, if not the most important one, is for a person to live in any town or any county of the United States in which he desires. And I note that that right is scrupulously avoided in all these bills.

One of the champions of FEPC comes from the State of Utah. And during the war a steel company moved a great many Negroes to a plant out there to work. The people of the town had a mass meeting

and would not permit them to live there. They told the steel company that they could not work there. The merchants of the town got together and agreed that they would not sell them food. They needed a restaurant in the town, of course, so they had to leave. Those men had a right to work there. They had a right, which was fundamental, to live in that area. And so I wonder why these measures point at the South but scrupulously avoid giving that elemental right.

I was in the State of Illinois recently. I had got on in the city of New Orleans. We came to a little town north of Effingham. A Negro employee on the train told me, "I have to drive 10 miles from my division point here to where I live because they will not let a Negro live in the town." Well, it appears to me that, if the whole civil-rights controversy is in good faith, that elemental right that is violated in Northern and Western States should certainly be protected.

Senator McGRATH. I think, myself, that these situations that you speak of are probably covered by the act; but I will be glad to support an amendment, if you will offer it, to have that provision in S. 1725.

Senator EASTLAND. It will be offered.

Mr. PEREZ. Senator, with the permission of the chairman of the committee, I had intended later offering in connection with my statement an editorial along that line published by a Negro leader, published in a newspaper of 500,000 circulation in this country and that has a good deal of influence among its people. I will do so at this time, with the permission of the chairman. I will read it. It is the same editorial that Senator Byrd had published in the Congressional Record.

Senator McGRATH. What paper, Mr. Perez, are you speaking about?

Mr. PEREZ. His name is Davis Lee, Negro publisher of the Telegram, of Newark, N. J., which has some 500,000 Negro readers in the Southern States, a publication which appeared in August of 1948. He reported to his readers, in a comprehensive article on the editorial page, some excerpts from which reflect his approach to the problem and provide sound counsel. It read:

I have just returned from an extensive tour of the South. In addition to meeting and talking with our agents and distributors who get our newspapers out to more than 500,000 readers in the South, I met both Negroes and whites in the urban and rural centers.

Because of these personal observations, studies, and contacts, I feel that I can speak with some degree of authority. I am certainly in a better position to voice an opinion that the Negro leader who occupies a suite in downtown New York and bases his opinions on the South from the distorted stories he reads in the Negro press and in the Daily Worker.

The racial lines in the South are so clearly drawn and defined, there can be no confusion. When I am in Virginia or South Carolina, I don't wonder if I will be served if I walk into a white restaurant. I know the score, However, I have walked into several right here in New Jersey, where we have a civil rights law, and have been refused service.

The whites in the South stay with their own and the Negroes do likewise. This one fact has been the economic salvation of the Negro in the South. Atlanta, Ga., compares favorably with Newark in size and population. Negroes there own and control millions of dollars' worth of business.

That is, in Atlanta, Ga.:

All of the Negro business in New Jersey will not amount to as much as our race has in one city in Georgia. This is also true in South Carolina and Virginia.

New Jersey today boasts of more civil rights legislation than any other State in the Union, and the State government itself practices more discrimination than Virginia, North Carolina, South Carolina, or Georgia. New Jersey employ one Negro in the motor vehicle department. All of the States above-mentioned employ plenty.

No matter what a Negro wants to do, he can do it in the South. In Spartanburg, S. C., Ernest Collins, a young Negro, operates a large funeral home, a taxicab business, a filling station, grocery store, has several busses, runs a large farm and a night club.

Mr. Collins couldn't do all that in New Jersey or New York. The only bus line operated by Negroes is in the South. The Safe Bus Co. in Winston-Salem, N. C., owns and operates over a hundred. If a Negro in New Jersey or New York had the money and attempted to obtain a franchise to operate a bus company, he would not only be turned down but he would be lucky if he didn't get a bullet in the back.

The attitude of the Southerners toward our race is a natural psychological reaction, an aftermath of the Civil War. Negroes were the properties of these people.

Certainly you could not expect the South to forget this in 75 or even 150 years. That feeling has passed from one generation to another. But it is not one of hatred for the Negro. The South just doesn't believe that the Negro has grown up. No section of the country has made more progress in finding a workable solution to the Negro problem than the South. Naturally, Southerners are resentful when the North attempts to ram a civil-rights program down their throats.

The entire race program in America is wrong. We expend all our energies and spend millions of dollars trying to convince white people that we are as good as they are, that we are an equal. Joe Louis is not looked upon as a Negro but as the greatest fighter of all time, and admired by whites in South Carolina as well as by those in Michigan. He convinced the world not by propaganda and agitation but by demonstration.

Our fight for recognition, justice, civil rights, and equality should be carried on within the race. Let us demonstrate to the world by our living standards, our conduct, our ability and intelligence, that we are the equal of any man, and when we shall have done this the entire world, including the South, will accept us on our terms. Our present program of threats and agitation makes enemies out of our friends.

Senator McGRATH. Do you want to put that in the record, too?

Mr. PEREZ. I have read it into the record.

Senator McGRATH. We must recess this hearing. The Senators have to get on the roll call promptly after 12 o'clock, or we are not recorded as present today.

Mr. PEREZ. I await your pleasure, Mr. Chairman.

Senator McGRATH. How many more witnesses have you, Judge?

Mr. PEREZ. I am the only one from my State.

Senator McGRATH. We will meet at 3 o'clock in the Senate District Committee room, and we will see how far we can get this afternoon.

Senator STENNIS. You will decide this afternoon when you are going to hold your next session?

Senator McGRATH. That is right.

Mr. PEREZ. Thank you, Mr. Chairman.

Senator McGRATH. The committee stands in recess until 3 p. m.

(Whereupon, at 12:02 p. m. the committee recessed, to reconvene at 3 p. m. this day.)

AFTERNOON SESSION

(The hearing reconvened at 3 p. m. pursuant to the luncheon recess.)

Senator McGRATH. The committee will be in order.

Mr. Perez, will you please continue.

STATEMENT OF LEANDER H. PEREZ, DISTRICT ATTORNEY OF THE TWENTY-FIFTH JUDICIAL DISTRICT OF THE STATE OF LOUISIANA, APPEARING AS SPECIAL REPRESENTATIVE OF THE ATTORNEY GENERAL OF THE STATE OF LOUISIANA—Resumed

Mr. PEREZ. Mr. Chairman, this morning I stated that the pattern of S. 1725 and all similar companion measures on so-called civil-rights measures for enforcement by the Federal Government followed the Russian pattern as found in Joe Stalin's Georgian state law which gave him the ascendancy power of law and which was later incorporated in the Russian Constitution which I filed this morning.

I want to point out that the same Joe Stalin had his all races law incorporated in other states which Russia has dominated since the war. One was the Latvian State.

There was a vigorous complaint filed by Under Secretary of State Sumner Welles in July 1940 which protested the devious process whereunder the political independence and territorial integrity of the three small Baltic Republics of Estonia, Latvia, and Lithuania were to be deliberately annihilated by one of their more powerful neighbors, meaning Russia, and he stated:

> The policy of this Government is universally known. The people of the United States are opposed to predatory activities, no matter whether they are carried on by the use of force or by the threat of force. They are likewise opposed to any form of intervention on the part of one state, however powerful, in the domestic concerns of any other sovereign state, however weak.

That statement certainly applies to the effort now being made by the force of the Federal Government through the set-up which these bills would provide for, a strong and overpowering Federal secret police and additions to the Department of Justice to police the civil rights of the American people and of the people of every State and to destroy their form of government under our Constitution.

Mr. Welles continued:

> The United States will continue to stand by these principles, because of the conviction of the American people that, unless the doctrine in which these principles are inherent once again governs the relations between nations, the rule of reason, of justice, and of law—in other words, the basis of modern civilization itself—cannot be preserved.

Those words are certainly pertinent in the situation here. That is found on page 209 of the Latvian-Russian relations documents published in 1944 by the Latvian Legation in Washington.

Then follows on page 211 of that booklet:

> Poletarian dictatorship in Latvia.—Constitution of the Latvian Soviet Socialist Republic imposed on Latvia on August 30, 1940.

In that constitution imposed on the unwilling people of Latvia we find article 95, similar to that of Stalin's all races law under the Russian Constitution, article 123. I quote article 95:

> The equality of rights of the citizens of the Latvian S. S. R., regardless of their nationality and race, in all branches of economic, state, cultural, and social-political life is an unalterable law.
>
> Any direct or indirect restriction of rights whatsoever, or, vice versa, direct or indirect establishment of privileges for citizens depending upon their racial or national affinity, as well as any promotion whatsoever of race or nationality, or the propagation of hatred and contempt shall be punished by law.

This is the Latvian-Russian relations, which includes a statement of protest by Under Secretary of State Welles which I read and the articles of the Latvian constitution which was imposed on Latvia in 1940 by Russia. It is found at page 211.

Senator McGRATH. Am I correct that the title of the pamphlet from which you quoted the Negro editor this morning is the "States' Rights Information and Speaker's Handbook"?

Mr. PEREZ. That is correct, but the quotation is correct from the editorial. I will be glad to file the entire document.

Senator McGRATH. I was unable to get hold of one of those. I would like to be able to read it.

Mr. PEREZ. It is very informative and instructive in good Americanism. It shall be glad to file it. I will mark it "Perez 3." There is some good material in that on basic Americanism.

(The document referred to was marked "Perez Exhibit 3" and filed for the information of the committee.)

Then again we see the hand of Stalin in imposing the same impossible so-called civil rights laws on Yugoslavia. There is a special booklet gotten out which is a commentary on that law. I referred to it in the memorandum filed and quoted on page 7 of my memorandum article 95 of the constitution and articles 1, 2, 3, and 4 of the Yugoslavian laws on that subject.

I want to call to the committee's attention a very pertinent comment on that civil rights law of Yugoslavia and its effect on the citizens.

On page 9 of the pamphlet entitled "The Law Prohibiting Incitement to National, Racial, and Religious Hatred and Discord, Legislation of the Federative People's Republic of Yugoslavia," published in 1947, the following appears on page 9:

> This law constitutes one of the weapons in the fight against the remnants of the old social and state order, a weapon in the struggle against the remnants of the old ideologies and inherited ideas which have remained in the heads of backward individuals and reactionary groups (especially the remnants of the ustashas and chetniks).
>
> That is why this law is a powerful weapon in the hands of the state for the suppression of any individual who attempts to hinder the great deed of the development of the progressive fraternal community of our peoples on the principle of true national equality.

We find the same language by coincidence, or worse, in the report of the President's Committee on Civil Rights which I read this morning on page 6, that—

> It is the purpose of government in a democracy to regulate the activity of each man in the interest of all men.

Again on page 100 this very similar language is found:

> We cannot afford to delay action until the most backward community—

the same language as used in Mr. Tito's pamphlet commenting on the powerful weapon which the civil-rights law is, in the hands of government, to suppress the individual.

I quote again:

> We cannot afford to delay action until the most backward community has learned to prize civil liberty and has taken adequate steps to safeguard the rights of every one of its citizens.

Senator McGRATH. Do you believe it is a function within the power of the several States to do these things?

Mr. PEREZ. As I read from the Supreme Court decision this morning, it is a function of State governments, and it was there originally, it was kept there when the United States Constitution was written and when the tenth amendment was adopted reserving all rights not specifically granted to the Federal Government, to the States or to the people, and it remains there.

Senator MCGRATH. The point I was trying to make is that you feel this power exercised by the State government is not as dangerous a power as it would be in the hands of the Federal Government?

Mr. PEREZ. Because by the exercise of this power by the State government the people themselves would be exercising that right of self-government constitutionally.

Senator MCGRATH. Do they not do that in the Federal Government through their representatives in Congress?

Mr. PEREZ. Their representatives in Congress are elected by the people, of course, but their representatives in Congress are sworn to uphold the Constitution of the United States, which was adopted by the people of this country in 1787 and ratified within a couple of years thereafter, and their representatives in Congress have no constitutional right to violate the rights reserved to the people themselves.

Senator MCGRATH. Have they a right to safeguard those rights?

Mr. PEREZ. They have no right to legislate on the subject of personal rights. Those matters of liberty and freedom were reserved for the people themselves, and it is beyond the power of Congress to legislate on that subject.

Senator MCGRATH. When those rights are ruthlessly denied to them, are taken away from them by other groups and they are powerless to get relief?

Mr. PEREZ. We cannot admit that those rights are ruthlessly denied to any groups because all groups, racial, religious, or otherwise, in every State, have the guaranty of the Federal Government Constitution that the States cannot discriminate against them in the equal operation of the State laws, and they have that absolute protection.

Senator MCGRATH. That is the whole question, do they have that protection?

Mr. PEREZ. We do know that the Committee on Civil Rights reported that there were violations of some of the civil rights of some of the people in some of the States, but we do not take, and cannot accept, the report of that committee at face value. It is known that the makeup of the President's Committee on Civil Rights indicates beyond question that it must have been chosen to write the report and make the recommendations that were made. Of the 15 members of the committee, three of them were members of the President's Fair Employment Practices Committee. All of the members of the committee with the exception of five were members of various committees of racial and religious bodies.

Senator EASTLAND. Is it not true that they did not hold meetings, did not summons witnesses, and did not hear any testimony.

Mr. PEREZ. The information which I have, which may be rumor—personally I think it is well founded—is that the report of the committee was in preparation before the committee was appointed and that the lawyers who wrote the report were very questionable characters and subject to subversive influences the European way.

Senator MCGRATH. Do you know who they were?

Mr. PEREZ. I cannot say who they were.

Senator MCGRATH. How can you make a statement of that kind then?

Mr. PEREZ. I qualified that statement by saying that it was the information I had which I could not substantiate. I said it might be a rumor. That report is both far fetched and far reaching and not based on facts generally. I need not go into all the details of that report because it is available to the members of this committee and to the Members of Congress.

Senator MCGRATH. I think at this point, while we are talking about the members of this committee and in view of the statement that maybe they let somebody else write their report or that maybe the report was written and signed by them without having any meetings, that we ought to put in the record at this point the names of the citizens who were members of the committee.

Mr. PEREZ. Yes; I have their names.

Senator EASTLAND. I should like the record to show whether they had meetings and took testimony and, if so, who testified. My information from a member of the committee is that they had no meetings and took no testimony.

Senator MCGRATH. I know nothing about that. The Senator is perfectly at liberty to inquire into that phase if he thinks it is pertinent to this bill.

Mr. PEREZ. I can only suggest it is within the province of this committee to question the members of the Civil Rights Committee appointed by the President to verify any facts within their knowledge.

The committee consisted of 15 members. First, is Dr. Frank P. Graham of North Carolina, one of the founders of the Southern Conference for Human Welfare, which only recently has been publicly designated as a Communist-front organization.

Senator MCGRATH. He is now a Member of the United States Senate.

Mr. PEREZ. He is now a Member of the United States Senate but that does not remove the stigma.

Senator MCGRATH. By appointment of the governor of one of the Southern States.

Mr. PEREZ. That is correct, sir, but, I am sorry, it does not change the background of the Senator. I do not accuse him of any wilfulness in the matter but that is his background.

Senator EASTLAND. It is also true with reference to the Southern Conference for Human Welfare that Earl Browder, the head of the Communist Party in the United States at the time, stated that the Southern Conference for Human Welfare was the transmission belt of communism to transmit communism to the Southern States.

Mr. PEREZ. It is true that the Governor of North Carolina appointed the Senator and from the general comment which I heard the news was received generally with disappointment.

Senator MCGRATH. Previous to that he had been elected by the trustees of his State university to be its president.

Senator EASTLAND. I can say this about the Southern Conference for Human Welfare, that there were people who joined that organization who did not know what it was. One of them was Senator Bankhead. Those gentlemen quit the organization shortly after it was founded because they saw what it was.

I do not impute any bad motives to Senator Graham. I just do not know anything about it.

Mr. PEREZ. I do not, Mr. Chairman. I only read it from the record as I know it, according to the information that I have.

Mrs. M. E. Tilley of Atlanta, Ga., secretary of the department of social relations, and well known for her views and activities in support of the alleged racial discrimination cause.

Dr. Graham and Mrs. Tilley constitute the only representatives from the South appointed on this committee.

James B. Carey, of Washington, D. C., secretary-treasurer of the Congress of Industrial Organizations, and chairman of the CIO Committee To Abolish Racial Discrimination.

Channing H. Tobias, of New York City, a Negro, cochairman of Labor Policy Committee, member of the Committee on Race Relations and field department of Council of Churches in America.

Walter White, the most prominent and active individual among Negroes to secure complete equality.

Boris Shiskin, of Alexandria, Va., Russian born, principal economist for the American Federation of Labor, a member of the President's Committee on Fair Employment Practice, labor advisor to NRA, and cochairman of the Labor Policy Committee of OPA.

Rev. Francis J. Haas, of Grand Rapids, Mich., chairman of the President's Committee on Fair Employment Practice.

Mrs. Sadie T. Alexander, of Philadelphia, Pa., member of the Inter-Racial Committee of Philadelphia.

Charles Luckman of Cambridge, Mass., chairman of Truman's Food Committee. Charles Luckman was the featured author of an article on discrimination of the Negro which was given wide distribution in one of our largest national weeklies.

Rev. Henry Knox Sherrill of Boston, Mass., member of the Governor of Massachusetts' Committee on Racial and Religious Understanding.

Senator MCGRATH. Also Episcopal bishop of Massachusetts.

Mr. PEREZ. Franklin D. Roosevelt, Jr., of New York City. Everyone is thoroughly familiar with his complete concurrence in and many activities in support of his mother's opinion and pronounced activities in favor of Negro social equality.

Morris L. Ernst of New York City, best known for his activities and writings in support of radical causes and particularly against racial discrimination.

Roland G. Gittelsohn of New York City, spiritual leader of the Central Synagogue at Rockville, Long Island, N. Y.

John S. Dickey, Hanover, N. H., president of Dartmouth College.

Francis P. Matthews of Omaha, Nebr., designated papal chamberlain by Pope Pius XII.

Senator MCGRATH. He is now Secretary of the Navy.

Mr. PEREZ. C. E. Wilson, of Scarsdale, N. Y., president of General Electric Co. and chairman of the committee.

That is why we submit that the make-up of the Truman Committee on Civil Rights indicates beyond question it must have been chosen to write the report and make the recommendations because of the 15 members of the committee, 8 of whom were members of the President's Fair Employment Practice Committee and all members of the

committee with the exception of 5 were members of the various racial and religious minority groups.

The report of the President's Committee is an indictment against the people of the South which from the editorial I read of the Negro publisher this morning and his personal investigation and from our own personal knowledge I would say is unfounded in fact. I do not think that the committee of Congress or the Congress itself should proceed on such a biased report.

I read from the pamphlet of the Legislation of the Federative People's Republic of Yugoslavia and I would like to file that pamphlet in conection with my statement and also the Latvian-Russian relations document including the Russian Constitution and the statement of Under Secretary of State Sumner Welles which I read and referred to on pages 209 and 223, marking the Latvian-Russian relations document "Perez No. 4" and the Yugoslavian pamphlet on civil rights laws of Yugoslavia "Perez No. 5."

(The documents referred to were marked as follows and filed for the information of the committee: Book entitled "Latvian Russian Relations, Documents," Perez No. 4, exhibit 4; and pamphlet entitled "Legislation of the Federative People's Republic of Yugoslavia, the law prohibiting incitement to national, racial, and religious hatred and discord," Perez Exhibit No. 5.)

Mr. Chairman, if I had more time I would like to go into a treatise of this subject which is found in the Staple Cotton Review, which is thorough and, I submit, well founded, and comments on the report of the Civil Rights Committee of the President and how the acceptance of that report would be turning back the clock to Reconstruction times and a first-hand treatise of the civil rights here during Reconstruction and the expense to the southern people under the carpetbagger rule, supported by the Federal Government under its civil rights which were declared later to be unconstitutional, and contains a statement made by Senator Borah, a great statesman of the United States Senate, in January 1938, found at page 11, which is unanswerable on this question. It also includes the act passed by Congress in 1867, which was a forerunner of the civil rights laws and provides for the more efficient government of the rebel States, just as Senate bill 1725 would pretend to legislate to protect the rights of the States to a republican form of government; and the veto message of President Andrew Johnson which goes into detail on the inequities and the injustices of the proposed civil rights measure. It gives a copy of the Civil Rights Act of 1875 which in many respects is similar to the provisions of Senate 1725 and it contains Amendment 14 of the Constitution of the United States.

I would like to submit that for the file in connection with my statement. I will mark that "Perez No. 6."

Senator McGRATH. All these documents will be received and filed for the record.

(The document entitled "The Staple Cotton Review," April 1948, was marked "Perez Exhibit No. 6" and filed for the information of the committee.)

Mr. PEREZ. I have pointed out the similarity, and I would say the derivation, of the President's attempted civil rights measure with the Joe Stalin all races law and those of other countries behind the iron curtain which have destroyed all semblances of liberty and freedom of

those countries under the totalitarian system which would be adopted in this country if such a bill were adopted by the Congress or upheld by the United States Supreme Court at this late date.

There is reference made by the committee report to the President which plainly admits that Congress does not have the power under the Federal Constitution to enact such civil-rights legislation but which attempts to evade or circumscribe or get around the constitutionality of these measures by making suggestions that possibly the present Supreme Court, if the matter were properly presented, might hold differently. I say that that is an ill-concealed effort at a conspiracy to involve the Supreme Court in this effort to deprive the American people of their liberty and freedom among their reserved rights under the Constitution and is really an insult to the integrity of the United States Supreme Court. I would like to find the page at which that reference is made.

Senator McGRATH. Is not that reference in the report?

Mr. PEREZ. Yes, sir; that is in this report. I was looking in the wrong pamphlet.

At page 104 of the report of the President's Committee on Civil Rights it is stated:

> The Constitution as it came from the Philadelphia Convention in 1787 granted to Congress no express power to enact civil rights legislation of any kind. Moreover, the first 10 amendments which made up our Bill of Rights far from granting any positive powers to the Federal Government serve as express limitations upon it. The thirteenth, fourteenth, and fifteenth amendments added to the Constitution immediately following the close of the Civil War do expressly authorize Congress to pass laws in certain civil rights areas. But we do know by the very words of the fourteenth and fifteenth amendments they apply strictly against the State or against the National Government, not against the individual citizens. But the areas are of limited extent and are clearly defined. Thus, there is nothing in the Constitution which in many words authorizes the National Government to protect the civil rights of the American people on a comprehensive basis. The committee is aware of the fate of the civil-rights program developed by Congress following the close of the Civil War.

I will not read the balance of that paragraph. On the next page, 105, it states:

> This early program was largely a failure.

And then the committee adds in the next paragraph on page 105:

> The committee does not believe that the action of the Supreme Court in declaring parts of the nineteenth-century civil-rights legislation unconstitutional proves that a well-conceived present-day attempt to strengthen the Federal civil rights program would meet a similar fate.

Senator McGRATH. The Supreme Court has been known to reverse itself many times in our history. It does it quite often on its own motion.

Mr. PEREZ. We are all hopeful that the confidence and respect of the United States Supreme Court will be maintained throughout the ages, but we do know the recent history of the Supreme Court and the attempt to pack it during the Roosevelt days, and while not made by law it followed by various appointments, and we do know the complex of the United States Supreme Court, and I say so as an American citizen and a lawyer, and it is generally known that many decisions of long standing have been set aside by the present Supreme Court, and evidently they are taking the Supreme Court into this conspiracy to destroy the rights and liberties of the American people. I

do not say the Supreme Court has acceded to the statement made by the committee in its report, but it certainly is a broad insinuation.

I do not have time to go into the treatise given to this subject and the efforts made to destroy segregation and to enforce civil rights as being against the people of the South or any other section of the country. That is covered thoroughly in this book entitled "Whither Solid South?" by Charles Wallace Collins, and he traces the similarity of the Russian civil-rights laws and the aftermath of the adoption of those laws in Russia, and I believe that they should serve as words of wisdom and caution and as a warning against the United States Congress following in the steps of the Russian dictators in imposing or attempting to impose such legislation against the people of this country.

So, Mr. Chairman, without objection, I should like to file this book instead of reading the various passages from it. I will mark it "Perez 7."

(The book entitled "Whither Solid South?" by Charles Wallace Collins was marked "Perez Exhibit No. 7" and filed for the information of the committee.)

In closing, I would say that the sponsors of these bills—and I do not necessarily refer to the author of this bill particularly, but I mean the sponsors outside the Congress of these bills—make claim that democracy in America would be made to work under threat of Federal imprisonment.

Such provisions are attempted in spite of the fact that Congress has no constitutional authority to enact such personal or social legislation.

Such so-called civil-rights legislation is attempted to be forced through Congress with all the power of the present national administration in spite of the fact that, when similar legislation was pending in Congress in 1944, the then Attorney General of the United States courteously suggested to the Labor Committee, before which said bills were pending, that they were unconstitutional.

There are movements today on foot on behalf of organized minority groups to annul those decisions of the Supreme Court, which have stood for more than seven decades, and to revive those Federal laws.

If, however, the time ever comes when the Congress of the United States should reenact such so-called civil-rights or force bills, with their baneful implications and results as was witnessed during Reconstruction times, and as again has been reconstructed behind the iron curtain in Russia and in its satellite states, and if the Supreme Court should be prevailed upon through political manipulations to declare that the Federal Government has jurisdiction over the civil rights of the individual citizens of every State of the Union, then this country will have abandoned the moorings of its constitutional heritage in favor of statism, the basic philosophy of the Russian system of government.

I submit, Mr. Chairman and gentlemen of this committee, that Senate 1725 and all similar companion measures should be reported unfavorably unless the chairman out of the goodness of his heart and his real Americanism would reconsider and withdraw the measure. That is only a humble suggestion which I would like to make.

Thank you very much, Mr. Chairman.

Senator McGRATH. Mr. Robinson?

STATEMENT OF J. HOPE ROBINSON, ASSISTANT ATTORNEY GENERAL OF SOUTH CAROLINA, REPRESENTING THE ATTORNEY GENERAL OF SOUTH CAROLINA

Mr. ROBINSON. I am J. Hope Robinson, assistant attorney general of South Carolina.

Mr. Chairman and gentlemen of the committee, I should like to state that I am speaking on behalf of John M. Daniels, attorney general of South Carolina for the past 25 years and president emeritus of the Association of Attorneys General, who would like to be here but due to illness was unable to make a trip of this nature.

Mr. Daniels feels very strongly about this bill, and I am sure he could be more precise on it than I can be.

Briefly we think that Senate 1725 is unwise, unworkable, and in many parts unconstitutional. We are opposed to it for itself alone. We are also opposed to Senate 1725 as an opening wedge to Senate 1728, the FEPC proposed legislation. We feel that, if you are successful in passing this bill, it will be easier to enact the FEPC Act.

Because of the shortage of time I will not go into the details on where I think the act is unconstitutional, but briefly we think it is so for this reason:

This Government is one of delegated powers. The Federal Government is restricted in its powers to those specifically set out in the Constitution, and all of the powers under the tenth amendment are reserved to the States and to the people. We do not believe the powers set out in the Constitution give the Federal Government the right to go as far as this bill goes.

You made the statement this morning, I believe, Mr. Chairman, that those powers are reserved to the people and the people could only act through the Federal Government. That is arguing around a circle. The people act by amending the Constitution or by electing representatives to the Federal Government, but you cannot argue that the powers that are reserved to the people can be exercised by the Federal Government. That is directly contrary to the tenth amendment of the Constitution.

Now we think this bill is aimed primarily at the South and the Negro question in the South, and we believe the Negro has made tremendous strides forward in the last 70 years since slavery and particularly in the last 15 or 20 years by a gradual process of evolution. We believe that is the way in which he should make progress and that a bill of this nature by the Federal Government is similar to a process of revolution, you might say, that it is a force bill seeking to do overnight what is being done gradually throughout the years.

That is why I say it is unworkable. It will not work in the South. You cannot send a man to prison, you cannot fine him or take money away from him without a trial by jury. At least, so far, a trial by jury is one of the rights a man is entitled to. Under this act, when a man is tried by a jury, the Federal court jury is still composed of southern citizens similar to your State court jury. They are no different. Negroes serve on State court juries now. We do not believe that the juries are going to convict men on an indefinite crime such as set out in Senate 1725.

In connection with the progress of the Negro, I might say that yesterday the Georgia Supreme Court reversed the conviction of a

Negro by an all-white jury, stating that Negroes were entitled to sit on the jury.

In my State of South Carolina Negroes sit on juries regularly. On the last case which I tried there were, I believe, two Negroes in a six-man county court jury. They are making progress.

I should like to call your attention to the findings of a group of Yankee schoolboys and this newspaper article in the Columbia State newspaper which came out date-lined Atlanta, which is an Associated Press article:

Four Yankee schoolboys from North Andover, Mass., got two "great surprises' in a 4-day canvass of this city on civil rights.

The first, they reported today, was:

"So many Negro people seemed not really interested in the whole question of civil rights and their own status."

The second was:

"Most of them (the Negroes) did not seem to mind segregation, but they thought that it would be better for all concerned to maintain it."

The story goes on to name the boys and to say who they talked to throughout Georgia, including the Governor, who, they said—

* * * struck us as a typical politician, perhaps not in the most flattering sense of the word.

They also talked to the chairman of the board of the Coca-Cola Co. and left his office feeling—

that it would be difficult for any State * * * to give to the workers or employees a more human, a more new, or a more fair deal than some of the industries have succeeded in giving them here in Atlanta.

I should like to put this article in the record for what it is worth, sir.

(The article referred to is as follows:)

YANKEE SCHOOLBOYS GET BIG SURPRISES IN 4-DAY CIVIL-RIGHTS CANVASS OF ATLANTA

ATLANTA, July 9.—Four Yankee schoolboys from North Andover, Mass., got two "great surprises" in a 4-day canvass of this city on civil rights.

The first, they reported today, was:

"So many Negro people seemed not really interested in the whole question of civil rights and their own status."

The second was:

"Most of them (the Negroes) did not seem to mind segregation, but they thought that it would be better for all concerned to maintain it."

The four New England visitors are 17-year-old students of Brooks school at North Andover. Their names are Morgan H. Harris, Jr., Geoffry Kimball; John S. Keating, Jr.; and Guilford Dudley III.

They came south, they explained, as travelers seeking to "know something of the people and the conditions." They went to all parts of the city asking questions and listening.

"We talked to churchmen and to waiters," they said in a joint report, "to housewives and to schoolgirls, to taxi drivers and to businessmen. We talked, talked, talked."

They were not surprised to find white residents against social equality between the races. But they were impressed, they said, by "the arguments and the sincerity of these people."

"The white people of Atlanta to whom we spoke," they related, "did not seem to mean a racial superiority, a destructive race mania of the Nazi type.

"They not only merely respected the colored race but wanted it to develop to the fullest extent possible. But they seemed wholeheartedly to believe that it would be better and more practicable if socially and culturally both races, in their own interest, continued to develop on their own lines, with the same freedom and the same respect for each other's race.

"To call people who maintained such view racialists or even Nazis seemed to us utter nonsense. There was nothing destructive but merely constructive in their approach.

"There was no element of persecution but merely human feelings of understanding and development in their thoughts."

The four told how they all went together to interview "very important persons." One of the "VIP's" was Gov. Herman Talmadge; another, Harrison Jones, chairman of the board of the Coca-Cola Co.

Of Talmadge, they said:

"The Governor struck us as a typical politician, perhaps not in the most flattering sense of the word."

They added that they left Jones' office feeling "that it would be difficult for any State * * * to give to the workers or employees a more human, a more new, or a more fair deal than some of the industries have succeeded in giving them here in Atlanta."

The four students signed their report "The New Voter," the name of a publication at their school. They were accompanied to Atlanta by F. P. Wiener, a faculty adviser.

Mr. ROBINSON. Here is another article that came out 2 days ago in one of the Columbia papers, a four-column article on Georgetown leader in Negro education retires after neraly 50 years of service, another indication that the Negro is making progress and is being recognized as having a better status in the South all the time.

A new Negro high school in my home town will be dedicated this fall to Dr. C. A. Johnson, the head of Negro schools in Columbia, and he is still living. It is the only school in my city which has been dedicated to a living person. It is quite an honor and is well deserved.

As I say, they are making progress, and we believe that the progress will be made better and more amicably without the Federal Government intervening by force.

This bill talks of Congress safeguarding to the several States the republican form of government. We do not believe that the Congress has the right to safeguard anything to the States unless the States ask for it. The proper way for a State to ask Congress to do something is by memorializing through the State legislature.

Senator MCGRATH. It is the right of Congress to determine that the State has a republican form of government?

Mr. ROBINSON. I do not know, sir, whether it is or not.

Senator MCGRATH. That is grounds for denying representation in Congress.

Mr. ROBINSON. I think it would be right for the Supreme Court to do it.

Senator MCGRATH. No; the Congress could find that the State does not enjoy a republican form of government and thus deny it representation in the Congress.

Mr. ROBINSON. It could do that; yes, sir; I grant you that. But that is a considerably different thing from safeguarding to the States this republican form of government from the lawless conduct of precedents threatening to destroy it.

We think that, when the States ask Congress to help them safeguard their own republican form of government, then it would be due time for Congress to act. Until that is done, we think that that is a matter that should be left to the States.

The basis of this country is founded on local self-government. A perfect example of local self-government in action is Alabama within the last 2 months. There has been evidence of hooded men committing assaults and things of that nature, and it has so aroused the citizens of that State that the legislature passed an act against it. Grand juries have gone into action with 20 or 30 indictments, I believe, already returned, and I have no doubt convictions will be had.

Senator EASTLAND. Do you believe there would have been any indictments if the Federal Government had gone down there?

Mr. ROBINSON. No, sir. I believe Mr. Hoover will tell you that when they go into a local matter and do not get local cooperation they get nowhere. That has been demonstrated time and time again. They have to have local assistance or the local law-enforcement officer on their side.

Senator EASTLAND. Is it not the genius of the American system of government that local affairs and local conditions will govern, policies will be decided by local communities involved?

Mr. ROBINSON. Yes, sir; that is the system on which this Nation has grown great. It is the system under our Constitution.

We say that this bill restricts the tenth amendment, if it does not come close to destroying it, and we say that Congress has no right to change the Constitution of the United States. That is left up to the people to do.

I do not want to take up any more of your time. I appreciate the opportunity of presenting my thoughts on the matter.

Senator MCGRATH. We appreciate both of you gentlemen giving your time to come up here and testify on this matter. Thank you very much.

The meeting will be recessed to some future time to be determined by the chairman of the subcommittee.

(Whereupon, at 4:15 p. m., the hearing was recessed, to be reconvened at the call of the Chair.)

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